Supreme Court, U.S.
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No. 04-

IN THE
Supreme Court of the United States

KIMBERLYE FINCH,

Petitioner,

v.

EDDIE LEE GALAWAY, ADMINISTRATOR, ON BEHALF OF ESTATE OF BRADFORD WAYNE GALAWAY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Employee Retirement Income Security Act of 1974 ("ERISA") dictates that ERISA plan administrators must administer plans "in accordance with the documents and instruments governing the plan," which plans, according to ERISA itself, "shall be established and maintained pursuant to a written instrument" and "shall ... specify the basis on which payments are made to and from the plan." 29 U.S.C. § 1102(a)(1), 1102(b)(4), 1104(a)(1)(D). ERISA plan administrators must make payments to a "beneficiary" who is, according to the dictates of 29 U.S.C. § 1002(8), "designated by a participant, or by the terms of an employee benefit plan." In this case the ERISA participant was authorized by a divorce decree to change the designation of his ex-wife as beneficiary of his life insurance, but did not make any such change to the plan designation prior to his death.

The question presented is whether the identity of a beneficiary of an ERISA-governed plan is controlled by the plain language of ERISA, 29 U.S.C. § 1104(a)(1)(D), and its reliance on the four corners of the concomitant written plan documents so designating, as the Sixth Circuit and some other lower courts have held, or by evolving and developing federal common law, as the Fifth Circuit and some others have held.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the United States Court of Appeals for the Fifth Circuit were Kimberlye Finch and Eddie Lee Galaway, Administrator, on Behalf of Estate of Bradford Wayne Galaway. The Guardian Life Insurance Company of America, the plaintiff in interpleader in the United States District Court for the Northern District of Texas, appeared as *amicus curaie* in the Fifth Circuit proceedings.

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INTRODUCTION

An employee of a company had life insurance benefits under an employee benefit plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). He designated his wife as the beneficiary in the plan documents. ERISA, 29 U.S.C. § 1104(a)(1)(D), dictates that such a plan is to be administered according to the plan documents. The ERISA plan participant and his wife divorced, and the participant then died intestate some months later, without making any change to his beneficiary designation. His estate now seeks the plan benefits, arguing that, notwithstanding the plan designation, the ex-wife could no longer be treated as the named beneficiary. The argument arises ostensibly under federal common law that is said to override 29 U.S.C. § 1104's reliance on the plan documents themselves.

This Court recently held that a state statute that provided for the automatic revocation upon divorce of the designation of a spouse as the beneficiary of an ERISA-governed employee benefit plan is preempted by ERISA. *Egelhoff v. Egelhoff*, 532 U.S. 141, 147-51 (2001). This case presents an important question that analytically follows the decision that state law cannot determine who is the proper beneficiary of an ERISA plan: Where state law cannot determine the identity of the beneficiary following divorce, should the beneficiary designation in the plan's documents control as ERISA, 29 U.S.C. § 1104(a)(1)(D), provides, or should a developing federal common law rule of waiver—generally adopted from the same otherwise-preempted state law—govern. This case presents, in stark terms, this important and fundamental question of ERISA plan administration on which the circuits are deeply divided.

Like the preemption issue decided in *Egelhoff*, Petitioner would urge that the terms of ERISA provide the answer: 29 U.S.C. § 1104(a)(1)(D) dictates that ERISA plan administrators must administer plans "in accordance with the documents and instruments governing the plan," which

plans, according to 29 U.S.C. § 1102(a)(1) and 1102(b)(4), "shall be established and maintained pursuant to a written instrument" and "shall ... specify the basis on which payments are made to and from the plan." ERISA plan administrators must make payments to a "beneficiary" who is, according to the dictates of 29 U.S.C. § 1002(8), "designated by a participant, or by the terms of an employee benefit plan." *See Egelhoff*, 532 U.S. at 147.

A minority of the federal circuit and district courts addressing this issue have thus held that, when faced with the question of whether a designated beneficiary waived her interest in a plan's proceeds through a divorce decree, ERISA's clear statutory command, together with the plan's provisions, answer the question and dictate that the plan documents control, notwithstanding entreaties to state law or federal common law or equity. The Fifth Circuit in this case, however, reaffirmed its own allegiance to the view of the majority of circuits holding to the contrary. Instead, these circuits hold that it is appropriate to invoke federal common law—developed by looking for guidance to state law—to determine if the named beneficiary of an ERISA plan waived her rights.

In light of this division among the circuits, which continues unabated and does not appear likely to resolve itself, the Court should grant the Petition and resolve this issue that has long percolated in the courts of appeal and that undermines plan administrators' ability to rely upon the predictability, uniformity, certainty, and simplicity of plan administration that ERISA is supposed to provide. *See Estate of Zienowicz v. Metropolitan Life Ins. Co.*, 205 F. Supp. 2d 339 (D.N.J. 2002) (noting the conflicting views of the various circuits and the split in authority among the courts within the District of New Jersey); George A. Norwood, *Who is Entitled to Receive a Deceased Participant's ERISA Retirement Plan Benefits—an Ex-Spouse or Current Spouse? The Federal Circuits Have an Irreconcilable Conflict*, 33 GONZ. L. REV. 61 (1997-98)

(discussing the conflict among the circuits and between decisions of the Eight Circuit).

Indeed, this case is particularly appropriate for resolving the continuing controversy. As the Fifth Circuit's decision noted, there is no dispute in this case that the plan is governed by ERISA, that the case should be disposed of on summary judgment in the absence of any disputed facts, and that the only issue before the Court is the purely legal issue of whether courts can rely on federal common law to determine an ERISA plan's beneficiary. The Fifth Circuit acknowledged the circuit split on this issue, but held that the courts (and plan administrators) should rely on federal common law to determine if an ERISA plan's named beneficiary has effected a common-law waiver of her interest in the plan's proceeds. The question presented is therefore wholly dispositive of the case.

OPINIONS BELOW

The opinion of the Fifth Circuit is reported at 395 F.3d 238 and reprinted at App. 1a-10a. The district court's opinion is unreported but is available at 2004 U.S. Dist. LEXIS 979 (N.D. Tex. Jan. 15, 2004) and reprinted at App. 11a-17a.

JURISDICTION

The judgment of the Fifth Circuit was entered on December 22, 2004. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT STATUTORY PROVISIONS

Section 404(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1104(a)(1), provides in pertinent part:

> Subject to sections 403(c) and (d), 4042, and 4044 [29 U.S.C. §§ 1103(c) and (d), 1342, 1344], a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV.

ERISA Section 402, 29 U.S.C. § 1102, provides in pertinent part:

(a) Named fiduciaries.

(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

(2) For purposes of this title, the term "named fiduciary" means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by

such an employer and such an employee organization acting jointly.

(b) Requisite features of plan. Every employee benefit plan shall—

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this title,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 405(c)(1) [29 U.S.C. § 1105(c)(1)]),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

STATEMENT OF THE CASE

The Guardian Life Insurance Company of America ("Guardian") filed this interpleader action in order to determine who should receive the proceeds of a life insurance plan governed by ERISA. App. 1a, 2a-3a, 12a.

Bradford Wayne Galaway ("Galaway") and Petitioner Kimberlye Finch ("Petitioner") were married on September 22, 2001. *Id.* 2a, 12a. On or about February 1, 2002, Guardian issued a group insurance policy to Galaway's employer, which provided Galaway with basic life insurance and accidental death benefits. *Id.* There has been no dispute that the policy constitutes an insured employee welfare benefit plan governed by and subject to ERISA. *Id.* 2a, 12a, 14a. Likewise, there is no dispute that Galaway named Petitioner as the beneficiary of the policy. *Id.* 1a, 2a, 12a.

Galaway and Petitioner were divorced on June 20, 2002. *Id.* 2a, 12a. As part of the divorce proceedings, they

voluntarily entered into an Agreed Final Decree of Divorce, signed by both Galaway and Petitioner and their respective attorneys, that awarded Galaway all "right, title, interest, and claim in and to" his life insurance policies. *Id.*

On November 8, 2002, Galaway was killed in an airplane accident. *Id.* He died intestate and had not changed the named beneficiary on the ERISA-governed life insurance policy prior to his death. *Id.*

Petitioner sought payment of the benefits under the policy, as the sole named beneficiary. *Id.* Eddie Lee Galaway ("Respondent"), the Administrator of the Estate of Bradford Wayne Galaway ("Estate"), also sought payment to the Estate of the benefits under the policy, claiming that the divorce decree terminated Petitioner's rights to those proceeds notwithstanding the continuing designation in the plan documents. *Id.* 1a, 2a, 12a.

On May 30, 2003, Guardian filed an interpleader action in the United States District Court for the Northern District of Texas, pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1), in which it asked the court to identify the proper beneficiary of the insurance proceeds and determine the competing claims to the proceeds of the ERISA-governed life insurance policy. *Id.* 1a, 2a-3a, 12a. By the order of the District Court and with the consent of all parties, the interpleader was resolved and determined by United States Magistrate Judge Irma C. Ramirez. *Id.* 1a. Guardian was discharged from all liability with respect to the benefits on September 16, 2003. *Id.* 12a-13a.

Petitioner and Respondent filed motions for summary judgment on the issue of entitlement to the benefits, acknowledging that there were no material disputed facts and stating that the only issue to be resolved was the law to be applied to the case to determine whether Petitioner effected a valid waiver of her right to the ERISA plan benefits. *Id.* 13a, 14a. In its motion, Respondent argued that ERISA does not prevent a beneficiary from waiving rights to insurance

benefits and that Petitioner waived her rights to the policy benefits in the divorce decree. *Id.* 14a. Petitioner argued that ERISA does not provide for waiver of beneficiary rights and dictates that benefits be paid in accordance with plan documents. *Id.* 14a. Petitioner further argued that the Supreme Court's decision in *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001), overruled the Fifth Circuit's prior decisions that called for courts to apply a federal common law rule of waiver in these circumstances. *Id.* 15a.

The magistrate judge noted that, "[a]lthough the Supreme Court did not determine whether conflict preemption was applicable upon a determination of ERISA preemption, its decision of *Egelhoff* does cast doubt on whether the Fifth Circuit's federal common law approach, as set out in [Fifth Circuit decisions pre-dating *Egelhoff*] should continue to be applied in such cases." *Id.* 15a. However, because "the Supreme Court declined to determine whether the principles of conflict preemption apply and did not overrule the federal common law approach set forth by the Fifth Circuit," the magistrate judge regarded herself as bound by the federal common law rule established by the Fifth Circuit. *Id.* 15a-16a.

On appeal, the Fifth Circuit rejected Petitioner's arguments that *Egelhoff* undermines the Fifth Circuit's "longstanding practice of looking to federal common law to determine if the named beneficiary of an ERISA-governed benefits plan has effected a valid waiver of her rights" and affirmed the judgment of the magistrate judge. *Id.* 3a-4a, 10a.

The Fifth Circuit panel noted:

> Outside of this circuit, the majority of courts that have considered whether federal common law governs disputes between an ex-spouse who is an ERISA plan's designated beneficiary and other claimants to the plan's proceeds have reached the same conclusion that this court has reached. Specifically, most courts have: (1) concluded

> that ERISA does not preempt a waiver by a named beneficiary of her interest in the plan's proceeds; and (2) relied on federal common law principles in order to determine if the named beneficiary effected a valid waiver of her rights under the plan. Only the Sixth Circuit has clearly gone the other way, finding that the text of ERISA forecloses employing federal common law to determine a plan's beneficiary. Hence, the majority of circuits that have considered the issue presently before this court have concluded, as we have done in the past, that it is appropriate to apply federal common law to determine if the named beneficiary of an ERISA plan has waived her rights.

App. 5a (citations omitted).

The Fifth Circuit then reviewed Petitioner's arguments based on *Egelhoff* and, after reviewing this Court's holdings and reasoning in that decision, concluded that "*Egelhoff* does not undermine this court's practice of applying federal common law to determine if an ERISA plan's named beneficiary has effected a valid waiver of her rights under the plan." *Id.* 6a-7a. The Court of Appeals enumerated four reasons for rejecting Petitioner's arguments. *Id.* 7a-9a.

First, the Fifth Circuit noted that "the holding of *Egelhoff* is inapplicable to the present case because *Egelhoff* does not address the application of federal common law to ERISA plans" but rather only "whether ERISA preempts a state statute that automatically revokes the designation of a spouse as the beneficiary of a life insurance policy upon divorce." *Id.* 7a.

Second, the Fifth Circuit concluded that "the goal of uniformity that the Supreme Court discusses in *Egelhoff* is not undermined when courts rely on the federal common law of waiver to determine if a beneficiary has waived her rights under an ERISA plan." *Id.* 8a. The Fifth Circuit relied upon its observation that "*Egelhoff* only discusses the problems created when plan administrators must look to state law in

order to identify a plan's beneficiary" and "never holds that uniformity would be undermined if courts relied on federal common law." *Id.* The Court of Appeals noted that "plan administrators must at times look to federal common law (*e.g.*, to determine how a certain provision of ERISA has been interpreted in a particular circuit)" and concluded that, as such, "reliance on federal common law cannot alone undermine the uniformity that the Supreme Court discusses in *Egelhoff*." *Id.* The Fifth Circuit in fact went further and opined that "applying federal common law to determine if an ERISA plan's beneficiary waived her rights can be seen as promoting, rather than undermining, national uniformity," citing the divided Seventh Circuit's observation that "federal courts are charged with creating federal common law rules to govern ERISA, and the creation of such federal rules will provide the needed uniformity." *Id.* (quoting *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 281-82 (7th Cir. 1990) (en banc)).

Third, the Fifth Circuit observed that "the Supreme Court in *Egelhoff* strongly suggested that courts can at times rely on common law principles when determining the identity of the beneficiary of an ERISA plan." *Id.* The panel pointed to the *Egelhoff* Court's discussion of state "slayer" statutes, in which the Court noted that "the principle underlying the statutes—which have been adopted by nearly every State—is well established in the law and has a long historical pedigree predating ERISA" and stated that, "because the statutes are more or less uniform nationwide, their interference with the aims of ERISA is at least debatable." *Id.* 8a-9a (quoting *Egelhoff*, 532 U.S. at 152). The Fifth Circuit further observed that "the Supreme Court has, at times, noted that it might be proper for lower courts to look to common-law principles when interpreting provisions of ERISA." *Id.* 9a.

Fourth, the Fifth Circuit observed that "several post-*Egelhoff* decisions from other circuits reinforce our conclusion that *Egelhoff* does not undermine this court's application of federal common law to determine if an ERISA

plan's named beneficiary has effected a valid waiver." *Id.* 9a-10a.

The Fifth Circuit entered judgment affirming the district court's judgment on December 22, 2004, and this petition followed.

REASONS FOR GRANTING THE PETITION

I. THE FIFTH CIRCUIT, IN CONFLICT WITH OTHER CIRCUITS, WRONGLY APPLIED FEDERAL COMMON LAW RATHER THAN THE ERISA PLAN DOCUMENTS, PURSUANT TO THE STATUTE, TO DETERMINE PETITIONER'S BENEFICIARY STATUS

This case presents the simple but fundamental and important question of what source of authority should determine the proper beneficiary of an ERISA employee benefit plan when the plan documents or instruments name a plan participant's ex-spouse as the beneficiary. Courts faced with this issue have sharply divided between a strict application of ERISA's plain textual commands to limit distributions to persons named in the plan documents and reliance on a waiver rule created under federal common law, that in turn borrows from preempted state law.

ERISA clearly dictates that plan administrators must administer employee benefit plans "in accordance with the documents and instruments governing the plan." 29 U.S.C. § 1104(a)(1)(D). The plans "shall be established and maintained pursuant to a written instrument" and "shall ... specify the basis on which payments are made to and from the plan." 29 U.S.C. § 1102(a)(1), 1102(b)(4). ERISA plan administrators must make payments to a "beneficiary" who is "designated by a participant, or by the terms of an employee benefit plan." 29 U.S.C. § 1002(8); *Egelhoff*, 532 U.S. at 147.

In the face of this statutory scheme, the law is well-settled that state law cannot govern the proper beneficiary to whom to distribute a plan's proceeds, because ERISA preempts

state laws "that directly conflict[] with ERISA's requirements that plans be administered, and benefits be paid, in accordance with the plan documents." 29 U.S.C. § 1144(a); *Egelhoff*, 532 U.S. at 147-50; *accord Manning v. Hayes*, 212 F.3d 866, 870 (5th Cir. 2000) (collecting cases). Lower courts are divided, however, on whether the text of ERISA itself provides the law to determine the proper beneficiary of an ERISA-governed plan or whether, finding no answer in the statutory language, a rule must be developed as a matter of federal common law.

The Sixth Circuit and at least one district court decision in the Third Circuit clearly hold—as dissenters in still other circuits have urged—that a clear beneficiary designation in plan documents or instruments cannot be disturbed by a waiver in external documents. *Central States, Southeast & Southwest Areas Pension Fund v. Howell*, 227 F.3d 672, 676-77 (6th Cir. 2000); *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 129-30 (6th Cir. 1996); *McMillan v. Parrott*, 913 F.2d 310, 311-12 (6th Cir. 1990); *Estate of Zienowicz v. Metropolitan Life Ins. Co.*, 205 F. Supp. 2d 339, 343-44 (D.N.J. 2002). These courts conclude, correctly, that 29 U.S.C. § 1104(a)(1)(D) provides the law to determine the proper beneficiary of an ERISA-governed plan by "establish[ing] a clear mandate that plan administrators follow plan documents to determine the designated beneficiary." *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996); *see also Central States, Southeast & Southwest Areas Pension Fund v. Howell*, 227 F.3d 672, 676 (6th Cir. 2000) (describing the Sixth Circuit's rule in terms of conflict preemption, stating that "[w]e have explicitly and repeatedly held that state court divorce decrees purporting to affect the benefits payable from an ERISA plan are preempted"). Thus, "a divorce settlement cannot waive [ERISA] plan benefits when a clear designation has been made on the plan documents," which documents therefore control the resolution of this issue. *Estate of Zienowicz v.*

Metropolitan Life Ins. Co., 205 F. Supp. 2d 339, 343 (D.N.J. 2002).

This minority view, which has also been espoused in forceful dissents by Judge Wilkinson in the Fourth Circuit and Judges Easterbrook and Ripple in the Seventh Circuit, holds that, where state law is preempted by ERISA, the text of 29 U.S.C. § 1104(a) "is clear on requiring that plan administrators follow the plan documents in making beneficiary designations." *Zienowicz*, 205 F. Supp. 2d at 344; *accord Estate of Altobelli v. IBM Corp.*, 77 F.3d 78, 82-84 (4th Cir. 1996) (Wilkinson, J., dissenting); *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 282-84 (7th Cir. 1990) (en banc) (Easterbrook, J., dissenting); *id.* at 284-85 (Ripple, J., dissenting). Thus, federal common law cannot be invoked to determine if a named beneficiary has waived her rights to plan benefits. The Second Circuit may join in this view.[1]

This view accords generally with this Court's own recent observation that, because of "ERISA's requirements that plans be administered, and benefits be paid, in accordance with plan documents," a state statute is preempted by ERISA where its operation dictates that "[p]lan administrators

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[1] Several courts have cited the Second Circuit's decision in *Krishna v. Colgate Palmolive Co.*, 7 F.3d 11 (2d Cir. 1993), as treating plan documents as controlling under 29 U.S.C. § 1104(a)(1)(D).

> In this case, the Policy includes a clear provision calling for the filing of written designations to name or change a beneficiary. It would be counterproductive to compel the Policy administrator to look beyond those designations into varying state laws regarding wills, trusts and estates, or domestic relations to determine the proper beneficiaries of Policy distributions.

Id. at 16 (cited in, *e.g.*, *Estate of Altobelli v. IBM Corp.*, 77 F.3d 78, 81 (4th Cir. 1996); *Metropolitan Life Ins. Co. v. Flinkstrom*, 303 F. Supp. 2d 34, 40 (D. Mass. 2004)). *But see Silber v. Silber*, 786 N.E.2d 1263, 1268 n.2 (N.Y. 2003) (stating that *Krisha* does not conflict with a federal common law waiver rule adopted by the majority of federal courts).

cannot make payments simply by identifying the beneficiary specified by the plan documents." *Egelhoff*, 532 U.S. at 148, 150; *see also id.* at 151 n.4 (noting that "we are called upon merely to interpret ERISA. And under the text of ERISA, the fiduciary 'shall' administer the plan 'in accordance with the documents and instruments governing the plan,' 29 U.S.C. § 1104(a)(1)(D). The Washington statute conflicts with this command because under this statute, the only way the fiduciary can administer the plan according to its terms is to change the very terms he is supposed to follow.").

In *Egelhoff*, in the context of ERISA preemption of a state statute that purported to require ERISA plan administrators to pay benefits to beneficiaries chosen by state law, the Court also rejected an approach by which a court can

> escape the conflict between the plan documents (which require making payments to the named beneficiary) and the statute (which requires making payments to someone else) by calling the statute an "invalidation" of the designation of the named beneficiary, and by observing that the plan documents are silent on whether "invalidation" is to occur upon divorce.

Id. at 148 n.1. The Court observed that:

> [r]eading a clear statement as an ambiguous metastatement enables one to avoid all kinds of conflicts between seemingly contradictory texts. Suppose, for example, that the statute required that all pension benefits be paid to the Governor of Washington. That seems inconsistent with the plan documents (and with ERISA), but the inconsistency disappears if one calls the statute an "invalidation" of the principal and alternate beneficiary designations. After all, neither the plan nor ERISA actually *says* that beneficiaries *cannot* be invalidated in favor of the Governor. This approach exploits the logical inability of any text to contain a complete set of instructions for its own interpretation.

Id.

Indeed, federal common law exists where "the Court is compelled to consider federal questions 'which cannot be answered from federal statutes alone.'" *Milwaukee v. Illinois*, 451 U.S. 304, 314 (1981) (quoting *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447, 469 (1942) (Jackson, J., concurring)). Thus, federal common law is "resorted to '[i]n the absence of an applicable Act of Congress.'" *Id.* (quoting *Clearfield Trust Co. v. United States*, 318 US. 647 (1963)).

Similarly, Judge Easterbrook, in his dissent from the en banc Seventh Circuit, rejected any reliance on ERISA's alleged silence with respect to when a named beneficiary effects a valid waiver: "Although ERISA does not say 'pay only the person whose name is on file,' it does say that every plan must act 'in accordance with the documents and instruments' governing it, 29 U.S.C. § 1104(a)(1)(D), and this plan has a written-designation rule." *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 283 (7th Cir. 1990) (en banc) (Easterbrook, J., dissenting). The command that plan documents govern a plan's administration does not suggest that it is open to exception simply because ERISA's text necessarily does not "contain a complete set of instructions for its own interpretation." *Egelhoff*, 532 U.S. at 148 n.1. In short, the fact that ERISA does not expressly discuss and reject every possible exception to its clear command does not mean that the statute is pregnant with ambiguity or that it contains a gap to be filled by federal common law.

The Fifth Circuit and a majority of other circuits hold exactly to the contrary: that "ERISA does not expressly address the circumstances, if any, in which a non-beneficiary may avoid the payment of life insurance benefits to the named beneficiary" and thus "the issue is governed by federal common law." *Manning v. Hayes*, 212 F.3d 866, 871 (5th Cir. 2000). The Fifth Circuit formulated its common law rule by adopting, with modifications, the Texas state statutory rule creating a presumption of waiver absent redesignation. *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321,

1326 (5th Cir. 1994); *accord Clift v. Clift*, 210 F.3d 268, 271-72 (5th Cir. 2000).

The Fifth Circuit has also disclaimed reliance upon 29 U.S.C. § 1104 to determine the proper beneficiary of ERISA-governed plans, holding "[t]hat section does not either expressly or implicitly purport to establish any methodology for determining the beneficiary of an ERISA plan or for resolving competing claims to insurance proceeds." *Manning*, 212 F.3d at 872. The Fifth Circuit has further rejected the argument that ERISA precludes, by means of conflict preemption, any reliance on federal common law when determining whether a named beneficiary is the proper beneficiary of plan benefits. *Id.*

As noted in the Fifth Circuit's own decision in this case, App. 5a, the Fourth, Seventh, and Eighth Circuits, as well as several district courts and state courts, have likewise rejected the minority rule and adopted similar federal common law approaches—most often adopted from otherwise-preempted state law—based on a divorce settlement or decree that is held at common law to trump an express designation in plan documents, *see Estate of Altobelli v. IBM Corp.*, 77 F.3d 78, 81-82 (4th Cir. 1996); *Lyman Lumber Co. v. Hill*, 877 F.2d 692, 693-94 (8th Cir. 1989); *Melton v. Melton*, 324 F.3d 941, 945-46 (7th Cir. 2003); *Metropolitan Life Ins. Co. v. Flinkstrom*, 303 F. Supp. 2d 34, 39-43 (D. Mass. 2004); *John Hancock Mut. Life Ins. Co. v. Timbo*, 67 F. Supp. 2d 413, 419-20 (D.N.J. 1999); *MacInnes v. MacInnes*, 677 N.W.2d 889, 892-92 (Mich. Ct. App. 2004); *Silber v. Silber*, 786 N.E.2d 1263, 1267-69 (N.Y. 2003); *Keen v. Weaver*, 121 S.W.3d 721, 725-26 (Tex. 2003). These decisions generally follow a highly-divided en banc decision by the Seventh Circuit in 1990, in which the majority decision concluded that "ERISA is silent on what constitutes a proper waiver in this situation" and that, "[w]hen ERISA is silent on an issue, a federal court must fashion federal common law rules to govern ERISA suits." *Fox Valley & Vicinity Constr.*

Workers Pension Fund v. Brown, 897 F.2d 275, 280, 281 (7th Cir. 1990) (en banc).

II. THE ISSUE IN CONFLICT IS STARKLY PRESENTED BY THE PRESENT CASE

This case is a particularly well-suited vehicle to address the circuit split. As the Fifth Circuit's decision noted, there is no dispute in this case that the plan is governed by ERISA, that the case should be disposed of on summary judgment in the absence of any disputed facts, and that the only issue before the court is the purely legal question of whether courts can rely on federal common law to determine if a named beneficiary of an ERISA plan waived her rights. App. 2a, 3a-4a.

Furthermore, this legal issue was wholly dispositive of the case in both the district court and the Fifth Circuit. App. 3a-10a, 13a-17a. The sole question presented is thus posed in particularly pristine terms by this case.

III. THE ISSUE IS RECURRING AND OF SUBSTANTIAL IMPORTANCE

The long-standing circuit split and the important national policy interests that the split and the majority rule implicate commend this case to the Court's review.

The circuits have been divided for almost fifteen years on the issue of what law determines the proper beneficiary of an ERISA plan. *Compare, e.g., Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 280 (7th Cir. 1990) (en banc), *with McMillan v. Parrott*, 913 F.2d 310, 311-12 (6th Cir. 1990). The split is deep and will not resolve itself, even after *Egelhoff*, as the recent divide among the district courts in the District of New Jersey attests. *Compare John Hancock Mut. Life Ins. Co. v. Timbo*, 67 F. Supp. 2d 413, 419-20 (D.N.J. 1999), *with Estate of Zienowicz v. Metropolitan Life Ins. Co.*, 205 F. Supp. 2d 339, 343-44 (D.N.J. 2002). There is no value to be gained by the Court

awaiting the passage of time to permit this issue to work its way further through the lower courts.

To the contrary, the split among the federal courts and the majority rule that currently prevails undermines important policy interests that run deeply through the ERISA statutory scheme. As the Court recently observed, a principal goal of ERISA is "nationally uniform plan administration" that enables "employers 'to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits.'" *Egelhoff*, 532 U.S. at 148 (quoting *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987)). Both the lack of uniformity among the federal courts and the majority rule's adoption of federal common law dictated by each circuit's own rule, adopted from the law of the states within each circuit, undermines this goal of uniformity and makes plan administration more difficult and more costly, particularly for multi-state employers. *See* Norwood, *supra*, 33 GONZ. L. REV. at 81-82.

A. The Minority Rule Creates Uniformity and Certainty and Reduces Litigation and Risks of Double Liability

In contrast, the Sixth Circuit's rule that plan documents control the proper beneficiary "fulfills the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application." *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990) (citing H. REP. NO. 533, 93d Congr., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Admin. News 4639, 4650). As Judge Wilkinson observed in his dissent from a Fourth Circuit decision, "[h]eeding 'the federal rule favoring beneficiary designations filed with a plan administrator' promotes the 'strong interest in uniform, uncomplicated administration of ERISA plans.'" *Estate of Altobelli v. IBM Corp.*, 77 F.3d 78, 82 (4th Cir. 1996) (Wilkinson, J., dissenting) (quoting *Krishna v. Colgate*

Palmolive Co., 7 F.3d 11, 16 (2d Cir. 1993)); *see also* Norwood, *supra*, 33 GONZ. L. REV. at 77.

"If the designation on file controls, administrators and courts need look no further than the plan documents to determine the beneficiary, thus avoiding expensive litigation as has occurred in" this interpleader action and many others before it under the federal common law majority rule. *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990). Judge Easterbrook of the Seventh Circuit thus observed that "[r]ules requiring payment to named beneficiaries yield simple administration, avoid double liability, and ensure that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules." *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 283 (7th Cir. 1990) (en banc) (Easterbrook, J., dissenting); *accord* Norwood, *supra*, 33 GONZ. L. REV. at 80 (discussing the dangers of double liability for a plan administrator who may inadvertently pay the incorrect beneficiary according to a federal common law determination and thereby incur liability for the cost of paying the correct beneficiary and of instituting efforts and possibly legal proceedings to recover payment from the incorrect beneficiary); *cf. Egelhoff*, 532 U.S. at 149-50 (discussing the danger of double liability and the ensuing inefficient incentives imposed upon plan administrators by a state statute purporting to govern the proper beneficiary of an ERISA-governed plan).

Judge Wilkinson of the Fourth Circuit likewise correctly noted in dissent that:

> "[r]eliance on the face of written plan documents" also furthers another of ERISA's central goals, that of "enabling beneficiaries[and employees] to learn their rights and obligations at any time." *Curtiss-Wright Corp. v. Schoonejongen*, 131 L. Ed. 2d 94, 115 S. Ct. 1223, 1230 (1995). Strict adherence to § 1104(a)(1)(D) ensures that all interested parties, including participants, beneficiaries, and plan administrators, can identify their

> rights and duties with certainty, a primary objective of ERISA. *Parrott*, 913 F.2d at 312.

Estate of Altobelli v. IBM Corp., 77 F.3d 78, 82 (4th Cir. 1996) (Wilkinson, J., dissenting); *accord Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 284 (7th Cir. 1990) (en banc) (Ripple, J., dissenting) ("This statutory command embodies a strong federal policy that all parties—participant, trustee, and beneficiary—be able to ascertain their rights and liabilities with certainty.").

B. The Majority Rule Leads to Uncertainty and Litigation Risk in the Circuits Applying It

The absence of a resolution of the circuit split by this Court and the continued observance by many courts of the majority rule lead not to certainty and simplicity of administration, but to multiplying litigation, particularly for national insurance companies that operate as plan administrators for participants throughout the country or multi-state employers administering their own plans. For example, Metropolitan Life Insurance Company, by virtue of published decisions in its own interpleader actions, is obliged to follow very different rules in Michigan and Texas and is forced to litigate, at risk of double liability, in every circuit that has not yet weighed in on the split. *Compare Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 129-30 (6th Cir. 1996), *with Metropolitan Life Ins. Co. v. Palmer*, 238 F. Supp. 2d 821, 825-26 (E.D. Tex. 2002).

It is, however, the administrators of small plans that are perhaps least able to sustain the costly investigation and litigation that inevitably ensues under the present split among the courts. *See* Norwood, *supra*, 33 GONZ. L. REV. at 78-80.

> Forcing plan trustees to examine a multitude of external documents that might purport to affect the dispensation of benefits frustrates the statutory goals of efficiency in administration and certainty in expectations. The costs

> associated with these inefficiencies might well "lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them."

Estate of Altobelli v. IBM Corp., 77 F.3d 78, 82-83 (4th Cir. 1996) (Wilkinson, J., dissenting) (citation omitted; quoting *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 11 (1987)).

The majority rule is not saved by a supposed uniformity among the federal common law rules adopted by various federal courts. This uniformity apparently is supposed to reside in the procedure of looking to federal common law for a waiver rule, although the actual rules created are anything but clear and uniform. *See* App. 7a. Indeed, under any federal common law rule,

> [i]nterpreting [divorce] decrees will cause problems for plan administrators. For instance, waiver provisions are often sweeping in their terms, leaving their precise effect on plan benefits unclear. Even when facing waiver terms that reference the affected plans, plan administrators will have to assess whether the waiver is executed with sufficient specificity to trump the beneficiary designation in the plan documents. Courts have reached contradictory conclusions in such situations. *Compare Lyman Lumber Co. v. Hill*, 877 F.2d 692[, 693] (8th Cir. 1989) (term stating that husband "shall have as his own, free of any interest of [his wife], his interest in the profit-sharing plan of his employer" held not to waive wife's beneficiary interest in plan), with *Fox Valley*[*& Vicinity Constr. Workers Pension Fund v. Brown*], 897 F.2d [275, 277 (7th Cir. 1990) (en banc)] (term stating that the parties "waive any interest or claim in and to any retirement, pension, profit-sharing and/or annuity plans resulting from the employment of the other party" held to waive wife's beneficiary interest in pension plan). Forcing plan trustees to make such determinations will

> only complicate plan administration and will leave all parties unsure of their rights and obligations.

Estate of Altobelli v. IBM Corp., 77 F.3d 78, 83 (4th Cir. 1996) (Wilkinson, J., dissenting) (citation omitted). Thus, under the majority rule, "a plan administrator, who may or may not be an attorney, is responsible for finding and interpreting the state and federal law addressing the issue of waivers incorporated into a divorce decree, and then applying that law to the particular waiver at issue to determine the proper recipient of the plan benefits." Norwood, *supra*, 33 GONZ. L. REV. at 82; *cf. Egelhoff*, 532 U.S. at 148-49 (noting that allowing state statutes to govern the proper beneficiaries under ERISA-governed plans would require plan administrators to "familiarize themselves with state statutes so that they can determine whether the named beneficiary's status has been 'revoked' by operation of law," in which situation "administrators might find that plan payments are subject to conflicting legal obligations" due to choice-of-law problems).

Further, as noted above, plan administrators even face uncertainty and lack of uniformity among jurisdictions adopting federal common law rules, in direct contravention of the well-settled understanding that "federal common law should be consistent across the circuits." *Singer v. Black & Decker Corp.*, 964 F.2d 1449, 1453 (4th Cir. 1992). This likewise leads to systemic inefficiencies and inconsistency in ERISA plan administration. *See* Norwood, *supra*, 33 GONZ. L. REV. at 95; *cf. Egelhoff*, 532 U.S. at 148 (noting, in the context of ERISA preemption of a state statute, that "[u]niformity is impossible, however, if plans are subject to different legal obligations in different States").

To advance all of the important policy goals of ERISA, "[t]he better rule is the one dictated by the statute—to honor the designations on file with the plan documents." *Estate of Altobelli v. IBM Corp.*, 77 F.3d 78, 83 (4th Cir. 1996) (Wilkinson, J., dissenting). This rule is easy to apply,

predictable across cases and jurisdiction, and lends itself to uniform, consistent application across the country.

In contrast, whatever equitable arguments can be advanced for giving effect to an ex-spouse's possible relinquishment of plan benefits in a divorce settlement or to any other conceivable competing claim at common law, it is critical to note that "[w]hat seem like small equitable steps in a particular case may lead to large administrative headaches in the aggregate." *Id.* As Judge Easterbrook observed in dissenting from the Seventh Circuit's 1990 en banc decision:

> ERISA is full of unyielding rules, designed to simplify administration. Rules have their flaws; loopholes and overbreadth, both producing unpalatable outcomes in the event of unanticipated circumstances, are among them. But whether to have rules (flaws and all) or more flexible standards (with high costs of administration and erratic application) is a decision already made by legislation. Congress and pension plans elected to use rules rather than standards; patterns of avoidance mean that we transmute the approach Congress chose into the one it rejected.

Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown, 897 F.2d 275, 283-84 (7th Cir. 1990) (en banc) (Easterbrook, J., dissenting).

In any event, the worst of all possible worlds for ERISA's goals of predictability, uniformity, certainty, and simplicity of plan administration is one in which the current circuit split requires plan administrators to determine the proper beneficiary in a divorce context based on the governing plan documents and instruments in some jurisdictions and based on varying formulations of federal common law rules in others.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 22, 2005

[Reported at 395 F.3d 238]

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, Plaintiff

v.

KIMBERLYE FINCH, Defendant – Appellant

v.

EDDIE LEE GALAWAY, Administrator, on behalf of Estate of Bradford Wayne Galaway, Defendant - Appellee

No. 04-10212

December 22, 2004, Filed

Appeal from the United States District Court for the Northern District of Texas.

Before KING, Chief Judge, and HIGGINBOTHAM and DAVIS, Circuit Judges.

KING, Chief Judge:

The Guardian Life Insurance Company of America filed this interpleader action in order to determine who should receive the proceeds of a life insurance plan governed by ERISA. Eddie Lee Galaway, the administrator of the decedent's estate, claimed that the estate should receive the proceeds because Kimberlye Finch, the named beneficiary and the decedent's ex-wife, waived her rights to them when she and the decedent divorced. By order of the district court and with the consent of all parties, this case was transferred to a magistrate judge. Applying the federal common law of waiver, the magistrate judge agreed with Eddie Lee

Galaway, determining that Finch had waived her rights under the plan. Accordingly, the magistrate judge granted summary judgment in his favor. Finch now appeals this decision, citing *Egelhoff v. Egelhoff*, 532 U.S. 141, 149 L. Ed. 2d 264, 121 S. Ct. 1322 (2001), for the proposition that a federal district court must look to the text of ERISA itself, not to federal common law, when identifying the beneficiary of a plan governed by ERISA. For the following reasons, we AFFIRM the judgment of the district court.

I. FACTUAL AND PROCEDURAL BACKGROUND

Bradford Wayne Galaway ("Galaway") and Kimberlye Finch married on September 22, 2001. On February 1, 2002, the Guardian Life Insurance Company ("Guardian") had issued to Galaway's employer a group life insurance policy covering Galaway. Galaway named Finch as the beneficiary of this policy. All parties to this suit agree that this life insurance policy is an employee welfare benefits plan governed by § 3(21)(A) of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461 (2000).

On June 20, 2002, Galaway and Finch divorced. As part of the divorce proceedings, they voluntarily entered into an Agreed Final Decree of Divorce that awarded Galaway all "right, title, interest, and claim in and to" his life insurance policies. The Agreed Final Decree of Divorce divested Finch of her interest in any such policies.

On November 8, 2002, Galaway died intestate in an airplane accident. At the time of his death, Galaway had not changed the named beneficiary of his life insurance policy.

After Galaway's death, both Eddie Lee Galaway, as administrator of Bradford Wayne Galaway's estate, and Finch claimed sole entitlement to the insurance proceeds. On May 30, 2003, Guardian filed an interpleader action in the United States District Court for the Northern District of

Texas, in which it asked the court to identify the proper beneficiary of the insurance proceeds.

In deciding the present case, the magistrate judge, citing Fifth Circuit precedent, applied federal common law to determine that Finch had waived her rights to the insurance proceeds. Accordingly, the magistrate judge granted summary judgment in favor of Eddie Lee Galaway and denied Finch's cross-motion for summary judgment. Finch now appeals this decision.

II. STANDARD OF REVIEW

This court reviews a district court's grant of summary judgment de novo. *Martinez v. Schlumberger, Ltd.*, 338 F.3d 407, 410-11 (5th Cir. 2003); *Clift v. Clift*, 210 F.3d 268, 269-70 (5th Cir. 2000). Summary judgment is appropriate when no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c).

III. ANALYSIS

On appeal, Finch argues that the magistrate judge erred when she relied on federal common law to identify the beneficiary of the life insurance plan. In support of this claim, Finch invites the court's attention to *Egelhoff*, 532 U.S. at 141, which she claims undermines this circuit's longstanding practice of looking to federal common law to determine if the named beneficiary of an ERISA-governed benefits plan has effected a valid waiver of her rights. All parties appear to agree that this issue—whether, after *Egelhoff*, courts can rely on federal common law to determine if the beneficiary of an ERISA plan has waived her rights—is the sole issue before the court. Likewise, all parties appear to agree that this case should be disposed of

on summary judgment because the facts of the case are not in dispute.

Finch's claim that the magistrate judge improperly applied federal common law when deciding this case fails. In this circuit, we have applied federal common law to determine whether the named beneficiary of a plan governed by ERISA has waived her rights under the plan. *See Manning v. Hayes*, 212 F.3d 866 (5th Cir. 2000), *cert. denied*, 532 U.S. 941, 149 L. Ed. 2d 345 (2001). For the reasons set forth below, *Egelhoff* does not undermine this approach.

A. Fifth Circuit Precedent

In a series of cases, this court has held that when ERISA preempts state law, we apply federal common law to determine whether a beneficiary like Finch has effected a waiver. *See Manning*, 212 F.3d at 866; *Clift*, 210 F.3d at 268; *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321 (5th Cir. 1994). Following this line of precedent, a waiver is valid if it is "explicit, voluntary and made in good faith." *Manning*, 212 F.3d at 871; *see also Clift*, 210 F.3d at 269-71; *Brandon*, 18 F.3d at 1325-27. In *Brandon*, a case quite similar to the present one, we held that a decedent's ex-wife, who was the named beneficiary of a life insurance plan governed by ERISA, was not entitled to the proceeds of the plan because she waived them in a settlement agreement. Specifically, in *Brandon*, this court found that ERISA preempted a Texas state law that would have automatically nullified upon divorce the decedent's previous designation of his then-wife as the plan's beneficiary. *Brandon*, 18 F.3d at 1325. After making this finding, this court then sought to "ascertain the law that is applicable to the controversy" by looking to the "statutory language or, finding no answer there, to federal common law . . . ." *Id.* (internal quotation marks omitted). Similarly, in *Manning*, this circuit followed the same approach. *See Manning*, 212 F.3d at 870. Specifically, it asked "whether, having established that the state law is

preempted, the federal law governing the resolution of [the case] may be reasonably drawn from the text of ERISA itself, or must instead be developed as a matter of federal common law." *Id.* Thus, in a series of cases, this court has consistently applied federal common law to determine the proper beneficiary of plans governed by ERISA.

Outside of this circuit, the majority of courts that have considered whether federal common law governs disputes between an ex-spouse who is an ERISA plan's designated beneficiary and other claimants to the plan's proceeds have reached the same conclusion that this court has reached. Specifically, most courts have: (1) concluded that ERISA does not preempt a waiver by a named beneficiary of her interest in the plan's proceeds; and (2) relied on federal common law principles in order to determine if the named beneficiary effected a valid waiver of her rights under the plan. *See Hill v. AT&T Corp.*, 125 F.3d 646, 648 (8th Cir. 1997); *Estate of Altobelli v. Int'l Bus. Machs. Corp.*, 77 F.3d 78, 81-82 (4th Cir. 1996); *Mohamed v. Kerr*, 53 F.3d 911, 914 (8th Cir. 1995), *cert. denied*, 516 U.S. 868, 133 L. Ed. 2d 123 (1995); *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 280 (7th Cir. 1990) (en banc), *cert. denied*, 498 U.S. 820, 112 L. Ed. 2d 41 (1990); *Metro. Life Ins. Co. v. Flinkstrom*, 303 F. Supp. 2d 34, 39-43 (D. Mass. 2004); *John Hancock Mut. Life Ins. Co. v. Timbo*, 67 F. Supp. 2d 413, 419-20 (D.N.J. 1999). Only the Sixth Circuit has clearly gone the other way, finding that the text of ERISA forecloses employing federal common law to determine a plan's beneficiary. *Metro. Life Ins. Co. v. Pressley*, 82 F.3d 126, 129- 30 (6th Cir. 1996) (concluding that "the Sixth Circuit takes a different view [from the majority of other circuits] and holds that ERISA itself supplies the rule of law."). Hence, the majority of circuits that have considered the issue presently before this court have concluded, as we have done in the past, that it is appropriate to apply federal common law to determine if the named beneficiary of an ERISA plan has waived her rights.

B. Finch's Arguments

In her appellate brief, Finch argues that *Egelhoff* effectively overrules this circuit's decisions looking to federal common law to identify the beneficiary of an ERISA plan. Instead, according to Finch, *Egelhoff* requires courts to look solely to the text of ERISA and to the plan documents—not to federal common law—in order to determine the proper beneficiary of a life insurance policy governed by ERISA. In support of this claim, Finch cites a passage in *Egelhoff* in which the Supreme Court stated that "ERISA's preemption section, 29 U.S.C. § 1144(a), states that ERISA shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan covered by ERISA." *Egelhoff*, 532 U.S. at 146 (internal quotation marks omitted). Finch also notes that the Supreme Court held that a "fiduciary shall administer the plan 'in accordance with the documents and instruments governing the plan,' making payments to a 'beneficiary' who is 'designated by a participant, or by the terms of [the] plan.'" *Id.* at 147 (alteration in original) (internal citation omitted). According to Finch, the magistrate judge's ruling in the present case, which relies on federal common law rather than the language of the plan documents, effectively abrogates ERISA as it relates to life insurance plans. Thus, Finch argues that the magistrate judge erred when she looked to federal common law in order to identify the plan's beneficiaries.

Second, Finch argues that the magistrate judge erred because applying federal common law to determine a plan's beneficiary would undermine the goal of uniformity in the application of ERISA. In support of this claim, Finch notes that in *Egelhoff*, the Supreme Court held that ERISA preempted a Washington statute providing for the automatic revocation of the designation of a former spouse as a plan's beneficiary upon a divorce. According to the Court,

preemption was necessary in order to prevent "requiring ERISA administrators to master the relevant laws of 50 States . . . ." *Egelhoff*, 532 U.S. at 149. The Court further noted that "uniformity is impossible, however, if plans are subject to different legal obligations in different States." *Id.* at 148. While *Egelhoff* pertained to a state statute, Finch contends that the uniformity it refers to would be defeated if plans are subject to different legal obligations in different federal districts or circuits. Accordingly, Finch claims that the magistrate judge erred when she relied on federal common law to decide this case.

C. The Effect Of *Egelhoff*

Contrary to Finch's assertions, *Egelhoff* does not undermine this court's practice of applying federal common law to determine if an ERISA plan's named beneficiary has effected a valid waiver of her rights under the plan. First, the holding of *Egelhoff* is inapplicable to the present case because *Egelhoff* does not address the application of federal common law to ERISA plans. Rather, *Egelhoff* only addresses whether ERISA preempts a state statute that automatically revokes the designation of a spouse as the beneficiary of a life insurance policy upon divorce. *Egelhoff*, 532 U.S. at 141. The Supreme Court's holding in *Egelhoff*—that ERISA does preempt a state statute that automatically revokes an ex-spouse as a plan's beneficiary after a divorce—is unremarkable and is in line with a number of decisions from this court holding that ERISA preempts state laws of this sort. *See, e.g.*, *Manning*, 212 F.3d at 870 (holding that 29 U.S.C. § 1144(a) preempts all state laws insofar as they relate to an ERISA plan). Finch's attempt to extend the holding of *Egelhoff* beyond its facts so as to undermine the magistrate judge's reliance on federal common law in the present case is unsupported by any case law and flatly contradicts this court's prior precedent. *See, e.g.*, *Manning*, 212 F.3d at 871; *Clift*, 210 F.3d at 269-71;

Brandon, 18 F.3d at 1325-26. This court sees no reason to extend the scope of *Egelhoff* to find that it preempts federal common law in addition to state statutes. Accordingly, the magistrate judge properly relied on federal common law when determining that Finch had waived her rights under the life insurance plan.

Second, the goal of uniformity that the Supreme Court discusses in *Egelhoff* is not undermined when courts rely on the federal common law of waiver to determine if a beneficiary has waived her rights under an ERISA plan. To begin with, *Egelhoff* only discusses the problems created when plan administrators must look to state law in order to identify a plan's beneficiary. *Egelhoff*, 532 U.S. at 148 (stating that uniformity would be undermined if plans are subject to different legal obligations in different states). *Egelhoff* never holds that uniformity would be undermined if courts relied on federal common law. In fact, plan administrators must at times look to federal common law (*e.g.*, to determine how a certain provision of ERISA has been interpreted in a particular circuit). Thus, reliance on federal common law cannot alone undermine the uniformity that the Supreme Court discusses in *Egelhoff*. Moreover, applying federal common law to determine if an ERISA plan's beneficiary waived her rights can be seen as promoting, rather than undermining, national uniformity. *See Fox Valley*, 897 F.2d at 281-82 ("As we have noted, federal courts are charged with creating federal common law rules to govern ERISA, and the creation of such federal rules will provide the needed uniformity."). Thus, Finch's argument that reliance on federal common law would undermine national uniformity fails.

Third, the Supreme Court in *Egelhoff* strongly suggested that courts can at times rely on common law principles when determining the identity of the beneficiary of an ERISA plan. *Egelhoff*, 532 U.S. at 152. Referring to state "slayer" statutes, the Supreme Court stated:

> In the ERISA context, these "slayer" statutes could revoke the beneficiary status of someone who murdered a plan participant. Those statutes are not before us, so we do not decide the issue. We note, however, that the principle underlying the statutes—which have been adopted by nearly every State—is well established in the law and has a long historical pedigree predating ERISA. And because the statutes are more or less uniform nationwide, their interference with the aims of ERISA is at least debatable.

Id. (internal citations omitted). Accordingly, the Supreme Court has, at times, noted that it might be proper for lower courts to look to common-law principles when interpreting provisions of ERISA. *See id.*; *Varity Corp. v. Howe*, 516 U.S. 489, 498, 502, 134 L. Ed. 2d 130, 116 S. Ct. 1065 (1996) (using the common law as a starting point for interpreting ERISA's fiduciary duties).

Finally, several post-*Egelhoff* decisions from other circuits reinforce our conclusion that *Egelhoff* does not undermine this court's application of federal common law to determine if an ERISA plan's named beneficiary has effected a valid waiver. For instance, in *Melton v. Melton*, 324 F.3d 941 (7th Cir. 2003), the Seventh Circuit relied on federal common law to determine if a valid waiver had been effected by a plan's beneficiary. The Seventh Circuit concluded that "even where ERISA preempts state law with respect to determining beneficiary status under an ERISA-regulated benefits plan, ERISA does not preempt an explicit waiver of interest by a nonparticipant beneficiary of such plan." *Id.* at 945. Similarly, in *Metropolitan Life Insurance Co. v. Johnson*, 297 F.3d 558, 567 (7th Cir. 2002), the Seventh Circuit stated that "the Supreme Court has recognized, in situations where ERISA preempts state law but is silent on a topic, that courts would have to develop a body of federal common law . . . ." A number of federal district courts and state courts have reached similar conclusions. *See, e.g.*, *Flinkstrom*, 303 F. Supp. 2d at 39-43; *Metro. Life Ins. Co. v. Palmer*, 238 F. Supp. 2d 821, 824-26 (E.D. Tex. 2002); *Keen v. Weaver*, 121

S.W.3d 721, 725, 46 Tex. Sup. Ct. J. 804 (Tex. 2003) ("We do not believe that *Egelhoff* precludes the application of federal common law to this dispute."); *Silber v. Silber*, 99 N.Y.2d 395, 404, 786 N.E.2d 1263, 757 N.Y.S.2d 227 (N.Y. 2003) ("The weight of federal authority now favors the view that a named beneficiary may waive its rights as a designated beneficiary through a waiver that meets common-law requirements.").

Thus, for all of the foregoing reasons, *Egelhoff* does not undermine this court's longstanding approach of relying on federal common law to determine if an ERISA plan's beneficiary has effected a common law waiver. Accordingly, the district court did not err when, following Fifth Circuit precedent, it relied on federal common law to grant summary judgment in favor of Eddie Lee Galaway because Finch had effected a valid waiver of her rights under the life insurance plan.

IV. CONCLUSION

For the foregoing reasons, this court AFFIRMS the judgment of the district court.

[2004 U.S. Dist. LEXIS 979]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, Plaintiff,

v.

KIMBERLYE FINCH and EDDIE LEE GALAWAY, AS ADMINISTRATOR OF THE ESTATE OF BRADFORD WAYNE GALAWAY, Defendants.

Civil Action No. 3:03-CV-1225-BH

January 15, 2004, Decided
January 16, 2004, Filed

MEMORANDUM OPINION AND ORDER

Before the Court are:

(1) Eddie Lee Galaway's *Motion for Summary Judgment*, filed September 30, 2003;

(2) *Kimberlye Finch's Response to Eddie Lee Galaway's Motion for Summary Judgment*, filed October 21, 2003;

(3) *Kimberlye Finch's Motion for Summary Judgment*, filed September 30, 2003;

(4) *Eddie Lee Galaway, as Administrator of the Estate of Bradford Wayne Galaway 's Response to Kimberlye Finch's Motion for Summary Judgment*, filed October 22, 2003; and

(5) *Kimberlye Finch's Reply to Eddie Lee Galaway's Response to Finch's Motion for Summary Judgment*, filed November 5, 2003.

Having reviewed the pertinent pleadings and the law applicable to the issues raised, the Court is of the opinion that Eddie Lee Galaway's *Motion for Summary Judgment* should be GRANTED and *Kimberlye Finch's Motion for Summary Judgment* should be DENIED.

I. BACKGROUND

Bradford Wayne Galaway ("Galaway") and Kimberlye Finch ("Finch") were married on September 22, 2001. On or about February 1, 2002, the Guardian Life Insurance Company of America ("Guardian") issued a group insurance policy to Galaway's employer, which provided Galaway with basic life insurance and accidental death benefits. The policy constitutes an insured employee welfare benefit plan governed by and subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002. Galaway named Finch as the beneficiary of the policy. Galaway and Finch were divorced on June 20, 2002. The *Agreed Final Decree of Divorce*, signed by both Galaway and Finch and their respective attorneys, awarded Galaway as his separate property, all insurance policies insuring his life. On November 8, 2002, Galaway was killed in an airplane accident. He died intestate and had not changed the named beneficiary on the life insurance policy prior to his death.

Finch claims that as the named beneficiary under the policy, she is entitled to receive the benefits payable under the policy. Eddie Lee Galaway, the duly appointed Administrator of the Estate of Bradford Wayne Galaway ("Estate"), asserts that Finch was divested of any rights to the policy benefits through the divorce decree and that the benefits should be paid to the Estate. On May 30, 2003, Guardian filed the instant interpleader action, seeking to require Finch and the Estate to interplead and settle their respective rights to the policy benefits. Guardian was discharged from all liability with respect to the benefits on

September 16, 2003. Both Finch and the Estate have now filed motions for summary judgment on the issue of entitlement to the benefits, stating that the only issue to be resolved is the law to be applied to the case.

II. STANDARD OF REVIEW

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate when the pleadings and record evidence show that no genuine issue of material fact exists and that, as a matter of law, the movant is entitled to judgment. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). A material fact is one that "might affect the outcome of the suit under the governing law" and a "dispute about a material fact is 'genuine' ... if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). In a motion for summary judgment, the burden is on the movant to prove that no genuine issue of material fact exists, and if the movant fails to meet his burden, the motion must be denied, regardless of the nonmovant's response. Little, 37 F.3d at 1075. If, however, the movant does meet his burden, then the nonmovant must go beyond the pleadings and "designate specific facts showing that there is a genuine issue for trial." *Id.* "If the non-movant fails to present facts sufficient to support an essential element of his claim, summary judgment is appropriate." *Vela v. City of Houston*, 276 F.3d 659, 666 (5th Cir. 2001). The record before the court must be considered in the light most favorable to the nonmovant. *Harrison v. Byrd*, 765 F.2d 501, 504 (5th Cir. 1985).

III. ANALYSIS

Both parties agree that no genuine issue of material fact exists in this case and that this case may be decided as a

matter of law. The parties also agree that the policy at issue in this case is governed by ERISA. The Estate argues that ERISA does not prevent a beneficiary from waiving rights to insurance benefits, and that Finch waived her rights to the policy benefits in the divorce decree. Finch asserts that ERISA does not provide for waiver of beneficiary rights and dictates that benefits be paid in accordance with plan documents.

ERISA broadly preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). The Fifth Circuit has held that the Texas beneficiary redesignation statute, Tex. Fam. Code § 9.301, relates to employee benefit plans and is preempted by ERISA. *Manning v. Hayes*, 212 F.3d 866, 870 (5th Cir. 2000). In *Manning*, the Fifth Circuit reaffirmed the rule set forth in *Clift v. Clift*, 210 F.3d 268 (5th Cir. 2000) and *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321 (5th Cir. 1994), that federal common law, rather than the text of ERISA itself, governs resolution of cases in which a former spouse who is still the designated beneficiary of a policy governed by ERISA is alleged to have waived her rights to the policy benefits. *Manning*, 212 F.3d at 872. The court decided not to follow the minority view, which employs the principles of conflict preemption, noting that "the law of family relations, which includes an individual's right to expressly apportion property upon divorce, has traditionally been a fairly sacrosanct enclave of state law." *Id.* at 872. The court determined that in applying federal common law to cases such as the case at bar, the courts should borrow from state law when determining the federal common law that should control. *Id.* According to the Fifth Circuit, the rule of federal common law applicable to disputes concerning waiver by a designated beneficiary of ERISA life insurance proceeds is that "a named ERISA beneficiary may waive his or her entitlement to the proceeds of an ERISA plan providing life insurance benefits, provided that the waiver is explicit, voluntary, and made in good faith." *Id.* at 874.

Finch asserts that the Supreme Court's decision in *Egelhoff v. Egelhoff*, 532 U.S. 141, 149 L. Ed. 2d 264, 121 S. Ct. 1322 (2001), "decisively overruled both *Clift* and *Brandon*." (Finch's Br. in Opp. to Galaway's M. for Summ. J. at 2.) In *Egelhoff*, the Supreme Court held that ERISA preempted a Washington state statute providing for automatic revocation of the designation of a former spouse upon divorce. *Egelhoff*, 532 U.S. at 143. The Court noted that preemption of such statutes is necessary to prevent "requiring ERISA administrators to master the relevant laws of 50 states." *Id.* at 149. However, the Court limited its holding to the finding that the Washington statute was expressly preempted by ERISA and declined to address whether the principles of conflict preemption applied. *Id.* at 146. The Court also failed to address the circuit split regarding whether federal common law or ERISA itself governs in cases of preemption and did not overrule the Fifth Circuit's common law approach as set out in *Clift* and *Brandon*.

Although the Supreme Court did not determine whether conflict preemption was applicable upon a determination of ERISA preemption, its decision of *Egelhoff* does cast doubt on whether the Fifth Circuit's federal common law approach, as set out in *Manning*, *Clift*, and *Brandon*, should continue to be applied in such cases. This issue was expressly considered in *Metropolitan Life Ins. Co. v. Palmer*, 238 F. Supp. 2d 821 (E.D. Tex. 2002), wherein the court conducted a detailed analysis of the common law approach to ERISA preemption and the potential effects of *Egelhoff* on that approach. There, the court noted that while *Egelhoff* involved the issue of ERISA preemption of a state statute, *Brandon* involved a divorce decree that could constitute a waiver under federal common law. *Metropolitan Life Ins. Co.*, 238 F. Supp. 2d at 825-26. The court cited *Egelhoff* for the proposition that one of the purposes of preemption was to prevent requiring ERISA administrators to master the relevant laws of 50

States. *Id.* at 826 (citing *Egelhoff*, 532 U.S. at 149). The court noted that

> application of a divorce decree presents much less danger. A divorce decree is entitled to full faith and credit. As such, the choice-of-law fears noted in *Egelhoff* do not exist. Absent a clear showing that the rule set forth in *Brandon* has been discredited by the Supreme Court, this district court is not at liberty to depart from the established law of the Fifth Circuit.

Metropolitan Life Ins. Co., 238 F. Supp. 2d at 826 (internal citations omitted). In light of the fact that the Supreme Court declined to determine whether the principles of conflict preemption apply and did not overrule the federal common law approach set forth by the Fifth Circuit in *Manning*, *Clift* and *Brandon*, this Court will also follow established Fifth Circuit precedent.

Applying the federal common law of waiver in this case, it is clear that Finch waived her rights to the policy benefits at issue. The Fifth Circuit has held that any waiver of ERISA benefits must be explicit, voluntary, and made in good faith. *Manning*, 212 F.3d at 874. The Agreed Final Decree of Divorce stated that Galaway was awarded "as his sole and separaty property, and [Finch] is divested of all right, title, interest, and claim in and to ... all policies of life insurance (including cash values) insuring [Galaway's] life. (Appx. to Galaway's M. for Summ. J. at 18, 23.) The divorce decree was signed by Finch and her attorney. *Id.* at 23. The waiver of Finch's rights to the policy is explicit, and Finch does not allege that there is any issue relating to whether the parties acted voluntarily or in good faith. Because the divorce decree include language explicitly divesting Finch of an interest in any and all policies insuring Galaway's life and the waiver was voluntary and in good faith, the Court finds that Finch waived her beneficiary status in the subject policy.

IV. CONCLUSION

For the foregoing reasons, the Court concludes that no genuine issue of material fact exists and that summary judgment is appropriate in this case. Accordingly, Eddie Lee Galaway's *Motion for Summary Judgment* is hereby GRANTED and *Kimberlye Finch's Motion for Summary Judgment* is hereby DENIED.

SO ORDERED on this 15th day of January, 2004.

/s/
IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

FINAL JUDGMENT

This Judgment is issued pursuant to the Court's Memorandum Opinion and Order, dated January 15, 2004.

It is therefore ORDERED, ADJUDGED, and DECREED that Eddie Lee Galaway's Motion for Summary Judgment is GRANTED.

It is further ORDERED, ADJUDGED, and DECREED that all funds interpled by the Guardian Life Insurance Company of America be delivered to Eddie Lee Galaway, as Administrator of the Estate of Bradford Wayne Galaway, and that Kimberlye Finch take nothing from this suit.

It is further ORDERED, ADJUDGED, and DECREED that the clerk shall transmit a true copy of this judgment to the parties.

SO ORDERED, this 15th day of January, 2004.

/s/
IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

(2)

Supreme Court, U.S.
FILED
APR 20 2005
OFFICE OF THE CLERK

No. 04-1283

IN THE

Supreme Court of the United States

KIMBERLYE FINCH,

Petitioner,

v.

EDDIE LEE GALAWAY, Administrator, on Behalf of Estate of BRADFORD WAYNE GALAWAY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The question presented by this case is, whether federal law permits a spouse, as part of a negotiated, agreed decree of divorce, to voluntarily, willingly, and knowingly enter into a waiver of all entitlement to ERISA life insurance benefits stemming from the employment of the spouse she is divorcing, accept and keep all of the consideration securing that waiver, and upon the subsequent death of the divorced spouse, renege on the agreement and collect the life insurance benefits.

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SUMMARY OF ARGUMENT

Federal statutory law does not address this question, so federal common law must provide the rule of decision, and in order to support the statutory policies declared by Congress, that rule of decision must not permit those who, in return for consideration, renounce all rights to life insurance benefits to claim those benefits.

ARGUMENT

In the instant case, Bradford Wayne Galaway, Deceased, obtained life insurance benefits through his employment. These benefits were subject to regulation by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 – 1461 (ERISA). He designated his wife at that time, the Petitioner, Kimberlye Finch, as the beneficiary of that life insurance policy. Subsequently, they agreed to divorce. They negotiated the terms of the divorce and entered into an agreed divorce decree, which a court approved. In partial return for concessions made by Mr. Galaway, Ms. Finch relinquished all entitlement to the proceeds of the life insurance policy. Just five months later, before he had changed the designation of the beneficiary of the life insurance policy, Mr. Galaway died in an airplane crash. Whereupon Ms. Finch claimed the life insurance benefits, her promise not to do so, made less than half a year earlier, notwithstanding.[1]

Both the United States District Court for the Northern District of Texas[2] and the United States Court of Appeals for

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[1] Appendix of "Petition for Writ of Certiorari," at page 2a.

[2] Appendix of "Petition for Writ of Certiorari," at page 17a.

the Fifth Circuit[3] ruled that Ms. Finch would have to live up to her promise not to claim title to the life insurance proceeds. She petitions this Court to rule that she does not.

The Respondent, Eddie Lee Galaway, Administrator, on Behalf of the Estate of Bradford Wayne Galaway, believes that this Court should deny the petition for a writ of certiorari because (1) the rulings by the United States District Court and the United States Court of Appeals in this case were correct, and (2) the split on the controlling issue between the United States Court of Appeals for the Sixth Circuit and practically every other reported decision of the issue is not such as warrants the intervention of this Court.

The Petitioner contends that ERISA expressly entitles one to knowingly, willingly, and voluntarily waive all entitlement to ERISA benefits, and then to turn around and successfully claim those same benefits.[4] She bases this contention on her construction of a specific section of ERISA, 29 U.S.C. § 1104(a)(1), which provides:

> Subject to sections 404(c) and (d), 4042, and 4044 [29 U.S.C. §§ 1103(c) and (d), 1342, and 1344], a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and

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[3] Appendix of "Petition for Writ of Certiorari," at page 10a.

[4] "Petition for Writ of Certiorari," at pages 10-11.

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV.

The United States Court of Appeals disagrees with that construction: "Section 1104 defines the fiduciary duties owed by the plan administrator to plan participants and beneficiaries. That section does not either expressly or implicitly purport to establish any methodology for determining the beneficiary of an ERISA plan or for resolving competing claims to insurance proceeds."[5]

This Court has rules for correctly construing statutes in circumstances such as these.

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[5] *Manning v. Hayes*, 212 F. 3d 866, 872 (5th Cir. 2000), *cert. denied*, 532 U.S. 941 (2001).

One is, "'[T]he title of a statute and the heading of a section' are 'tools available for the resolution of a doubt' about the meaning of a statute."[6] The title of 29 U.S.C. § 1104 is, "Fiduciary Duties." The title of paragraph (a) of 29 U.S.C. § 1104 is, "Prudent Man Standard of Care." This rule clearly militates in favor of the construction by the United States Court of Appeals for the Fifth Circuit.

Another of this Court's rules for correctly construing statutes in circumstances such as these is: "All statutes must be construed in the light of their purpose. A literal reading of them which would lead to absurd results is to be avoided when they can be given a reasonable application consistent with their words and with the legislative purpose."[7] This is because, "[The Court] cannot attribute to Congress the intention to . . . open the door to . . . undesirable possibilities."[8] The construction of 29 U.S.C. § 1104(a)(1) advocated by the Petitioner leads to the result that the benefits end up in the possession of the one person on the planet whom all parties to the lawsuit have agreed should not ever have

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[6] *Almendarez-Torrs v. United States*, 523 U.S. 224, 234 (1998), *quoting*, *Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R.*, 331 U.S. 519, 528-29 (1947).

[7] *Haggar Co. v. Helvering*, 308 U. S. 389, 394 (1940); *see also Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("It is true that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available."); *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 394 (1940) ("Statutes should be interpreted to avoid untenable distinctions and unreasonable results whenever possible.").

[8] *American Tobacco Co. v. Patterson*, 456 U. S. 63, 71 (1982).

them – the only person who knowingly and voluntarily waived all title to them. The absurdity of this result dictates that the construction supported by the Petitioner should be avoided, and that the construction of the statute by the United States Court of Appeals for the Fifth Circuit is correct.

Another rule used by this Court to arrive at the correct construction of a statute in circumstances such as these is: "Where congressional intent is discernible – and here it seems crystal clear – we must give effect to that intent."[9] This Court has already determined the express intent of ERISA:

> Section 1001(b) states that the policy of ERISA is "to protect . . . the interests of participants in employee benefit plans and their beneficiaries." Section 1001(c) explains that ERISA contains certain safeguards and protections which help guarantee the "equitable character and the soundness of [private pension] plans" in order to protect "the interests of participants in private pension plans and their beneficiaries."[10]

The construction urged by the Petitioner neither protects the interests of participants in ERISA plans nor guarantees the equitable character of private pension plans. Rather, it deprives workers of ERISA plan benefits that they have earned, first, and bargained to keep, second. An ERISA plan could not be operated in a more unjust or inequitable fashion.

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[9] *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 215 (1962).

[10] *Boggs v. Boggs*, 520 U.S. 833, 845 (1997). The title of 29 U.S.C. § 1001 is, "Congressional Findings and Declaration of Policy."

So once more, the rules used by this Court to construe statutes forbid the construction of 29 U.S.C. § 1104(a)(1) sought by the Petitioner.

Adopting the construction given to 29 U.S.C. § 1104(a)(1) by the United States Court of Appeals, however, leaves open the question of what ". . . methodology for determining the beneficiary of an ERISA plan or for resolving competing claims to insurance proceeds" courts should employ.

"Given th[e] language and history [of ERISA], [This Court] ha[s] held that courts are to develop a 'federal common law of rights and obligations under ERISA-regulated plans.'"[11] According to this Court, Congress preferred the degree of uniformity of application and enforcement of ERISA afforded by a combination of (1) the pre-emption of the laws of the various States that conflicted with ERISA[12] and (2) the subsequent development of ". . . a federal common law of rights and obligations under ERISA-regulated plans. . . ."[13]

So to establish rights and obligations under ERISA plans in cases where one waives rights to ERISA benefits, the United States Courts of Appeals for the Fourth,[14]

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[11] *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989).

[12] 29 U.S.C. § 1144 (a).

[13] *Pilot Life Ins. v. Dedeaux*, 481 U.S. 41, 55-56 (1987).

[14] *Estate of Altobelli v. Int'l Bus. Mach.*, 77 F.3d 78, 81-82 (4th Cir. 1996).

Fifth,[15] Seventh,[16] and Eighth[17] Circuits, after determining that ERISA does not address the effect of such a waiver, employ federal common law. The federal common law they fashion uniformly requires those who knowingly and voluntarily promise not to claim ERISA plan benefits to honor their promises. The approach by these Courts of Appeals thereby protects the interests of participants in ERISA plans and maintains the equitable character of those plans by avoiding the absurd result of awarding ERISA benefits to the only party who has voluntarily, willingly, and knowingly disavowed all right and title to those benefits.

As for the construction of 29 U.S.C. § 1104(a)(1) posited by the Petitioner, "The Sixth Circuit is the only circuit to unambiguously employ this minority approach."[18]

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[15] *Manning*, 212 F.3d at 870-71; *Clift v. Clift*, 210 F.3d 268, 270 (5th Cir. 2000); *Brandon v. Travelers Ins.*, 18 F.3d 1321, 1324 (5th Cir. 1994).

[16] *Melton v. Melton*, 324 F.3d 941, 945 (7th Cir. 2003); *Fox Valley & Vicinity Construction Workers Pension Fund v. Brown*, 897 F.2d 275, 280 (7th Cir.) (*en banc*), *cert. denied*, 498 U.S. 820 (1990) ("ERISA is silent on the issue of what constitutes a proper waiver in this situation, . . . When ERISA is silent on an issue, a federal court must fashion federal common law rules to govern ERISA suits.").

[17] *Hill v. A T & T Corp.*, 125 F.3d 646, 648 (8th Cir. 1997) ("The issue of whether and how a divorce decree may divest a person of beneficiary rights is not explicitly considered in ERISA and thus is a question of federal common law."); *Mohamed v. Kerr*, 53 F.3d 911, 914 (8th Cir. 1995), *cert. denied*, 516.U. S. 868 (1995); *Lyman Lumber Co. v. Hill*, 877 F. 2d 692, 693 (8th Cir. 1989) ("None of ERISA's express provisions addresses the issue presented in this case. We therefore must ascertain the proper federal common law principles that should govern.").

[18] *Manning*, 212 F.3d at 872. *But see*, discussion at page 12, n. 1, of "Petition for Writ of Certiorari."

The Petitioner nevertheless advocates for her construction of 29 U.S.C. § 1104(a)(1) on the ground that it leads to a better method of achieving the degree of uniformity of ERISA law that Congress desired than the method selected by Congress for achieving that uniformity – the development of a federal common law of rights and obligations under ERISA.[19]

Even were it true that Congress was unwise in selecting the development of a federal common law of rights and obligations under ERISA as the means for achieving the degree of uniformity it desired, or even if that selection has failed, the fact remains, "The wisdom of congressional approach or methodology is not open to judicial veto."[20] Rather, this Court has proclaimed, "Our individual appraisal of the wisdom or unwisdom of a particular course consciously

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[19] "Petition for Writ of Certiorari," at page 17 ("Both the lack of uniformity among the federal courts and the majority rule's adoption of federal common law dictated by each circuit's own rule, . . . undermines this goal of uniformity and makes plan administration more difficult and costly, particularly for multi-state employers."); *see also id.*, at page 20 ("The majority rule is not saved by a supposed uniformity among the federal common law rules adopted by various federal courts.").

[20] *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 509 (1975); *accord*, *Miller v. Youakim*, 440 U.S. 125, 142 n. 21 (1979); *Green v. Frazier*, 253 U.S. 233, 240 (1979) (With the wisdom of such legislation, and the soundness of the economic policy involved we are not concerned. Whether it will result in ultimate good or harm it is not within our province to inquire.); *United States v. Georgia Pub. Serv. Comm'n*, 371 U.S. 285, 293 (1963) ("Whether the federal policy is a wise one is for the Congress and the Chief Executive to determine. Once they have spoken it is our function to enforce their will.").

selected by the Congress is to be put aside in the process of interpreting a statute. Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end."[21]

The Petitioner bases her construction of 29 U.S.C. § 1104(a)(1) on the claim that, "Both the lack of uniformity among the federal courts and the majority rule's adoption of federal common law dictated by each circuit's own rule, . . . makes plan administration more difficult and costly, particularly for multi-state employers."[22] In fact, the adoption of federal common law imposes no additional burden upon ERISA plan administrators.[23] And even if it did, it must be remembered that ERISA was enacted for the benefit of employees, not plan administrators. Finally, an appeal for relief from any such burdens is properly addressed to

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[21] *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 194 (1978).

[22] "Petition for Writ of Certiorari," at page 17.

[23] *Brown*, 897 F.2d at 282

> No such additional burdens will be imposed because, under the ERISA statutory scheme, a plan administrator must investigate the marital history of a participant and determine whether any domestic relations orders exist that could affect the distribution of benefits. . . . Our decision only requires plan administrators to continue their current practice of thoroughly investigating the marital status of a participant.

Accord, *Altobelli*, 77 F.3d at 81.

Congress, not this Court.[24] So the claim that the approach adopted by the four United States Courts of Appeals unduly burdens plan administrators does not support the construction of 29 U.S.C. § 1104(a)(1) proffered by the Petitioner.

The Petitioner persists, "To advance all of the important policy goals of ERISA, '[t]he better rule is the one dictated by the statute – to honor the designations on file with the plan documents."[25] This does not take into account, however, the express desire of Congress that ERISA should be construed and applied in a manner that protects the interests of participants in private benefit plans and guarantees the equitable nature of those plans.[26] There is no equity in turning benefits earned by a worker over to the one person the worker does *not* want to have them. Congress has never made justice a trivial policy goal of ERISA. To the contrary, it is perfect and absolute uniformity across the Circuits which is of lesser import.[27]

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[24] *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 124 (1980) ("Thus, petitioners' claim that the Commission's compliance with the requirements of 6 (b) (1) will impose undue burdens on the Commission is properly addressed to Congress, not to this Court."); *see also Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("It is enough that Congress intended that the language it enacted would be applied as we have applied it. The remedy for any dissatisfaction with the results in particular cases lies with Congress and not with this Court. Congress may amend the statute; we may not.").

[25] "Petition for Writ of Certiorari," at page 21, *quoting*, *Altobelli*, 77 F.3d at 83 (Wilkinson, J., dissenting.).

[26] *See* text at footnote 10, *supra*.

[27] *See United States v. Stauffer Chemical Co.*, 464 U.S. 165, 177 (1984) (White, J., concurring) ("Conflicts in the circuits are

(Cont'd)

Finally, the Petitioner contends that this Court must resolve the split between one United States Court of Appeals and one United States District Court, on the one hand, and all other courts, on the other, to avoid "multiplying litigation" across the country.[28] But the decade-long existence of this difference between a couple of federal courts, on the one hand, and all other courts, on the other, actually appears to have generated few reported decisions of the issue. This is probably a function of two factors: (1) It never occurs to most persons who have waived their right to life insurance or other benefits as part of an agreed divorce settlement that they can engage in some legal maneuver whereby they can claim those benefits nonetheless, and (2) Of that small number of persons, an even tinier subset would feel right about attempting such a maneuver. Courts can dispose of the claims of these few people simply and efficiently by summary adjudication, as was accomplished in the instant case. And in the end,

> [R]espondent ha[s] not come forward with any demonstration that [ERISA] litigation [such as this] has been so costly or voluminous that either the [insurance industry] or the courts have been unduly burdened. Nothing but speculation supports the argument that [ERISA] administrators will be so concerned about the risk

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(Cont'd)

generally accepted and in some ways even welcomed. Indeed, were consistency a compelling concern as between circuits, the decision of one circuit would bind the others even in litigation between two entirely different parties. That is not the route the federal courts have followed.").

[28] "Petition for Writ of Certiorari," at page 19.

> of litigation that they will fail to discharge their important responsibilities in an independent and professional manner.[29]

Although a split among the Circuits regarding the construction of 29 U.S.C. § 1104(a)(1) technically exists, it is a split which more closely resembles a split within a single Circuit, in that it can be resolved by the action of a single Circuit.[30] Further, such action is quite possible, given ". . . that even the Sixth Circuit's application of the minority rule has, at times, been less than enthusiastic."[31] And the split in the instant case creates no more uncertainty than the typical split within a Circuit, because with the exception of persons residing in the Sixth Circuit, ERISA plan beneficiaries can be fairly certain that they cannot obtain ERISA benefits that they waive knowingly, voluntarily, and willingly.

Given this nature[32] of the split on the issue presented by the instant case, the petition for a writ seems not to raise a

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[29] *Cannon v. University of Chicago*, 441 U.S. 677, 709-10 (1979).

[30] *Cf.*, *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) (*per curiam*) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

[31] *Manning*, 212 F. 3d at 871.

[32] *See Rice v. Sioux City Cemetery*, 349 U.S. 70, 79 (1955)

> "[I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and

(Cont'd)

matter of truly national import warranting the time and attention of this Court,[33] a conclusion this Court has repeatedly and consistently reached in the past.[34]

Should the Court feel that even this relatively small conflict is intolerable, however, the Respondent urges this Court to resolve it by granting the application for writ of certiorari and summarily affirming the decision of the United States Court of Appeals for the Fifth Circuit.[35]

(Cont'd)

> in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal. *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U. S. 387, 393 (1923).").

[33] *See Superintendent v. Hill*, 472 U.S. 445, 459 (1985) (Stevens, J., dissenting).

[34] *See, e.g., Manning v. Hayes*, 532 U.S. 941 (2001); *Pressly v. Pressly*, 520 U.S. 1263 (1997); *Mohamed v. Kerr*, 516 U.S. 868 (1995); *Brown v. Fox Valley & Vicinity Construction Workers Pension Fund*, 498 U.S. 820 (1990).

[35] *See* S. Ct. Rule 16.1; *see, e.g., Stone v. Graham*, 449 U.S. 39 (1980) (*per curiam*); *compare, Hicks v. Miranda*, 422 U.S. 332, 344-45 (1975).

CONCLUSION

The Respondent requests this Court to deny the petition for a writ of certiorari in this case, or, in the alternative, to grant the petition and to affirm summarily the judgment entered in this case by the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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No. 04-1283

IN THE
Supreme Court of the United States

KIMBERLYE FINCH,

Petitioner,

v.

EDDIE LEE GALAWAY, ADMINISTRATOR, ON BEHALF OF ESTATE OF BRADFORD WAYNE GALAWAY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF OF PETITIONER

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George A. Norwood, *Who is Entitled to Receive a Deceased Participant's ERISA Retirement Plan Benefits—an Ex-Spouse or Current Spouse? The Federal Circuits Have an Irreconcilable Conflict*, 33 GONZAGA L. REV. 61 (1997-98) 3

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Respondent agrees that there is a conflict among the circuits as to the question presented: whether the identity of a beneficiary of an ERISA-governed plan is controlled by the plain language of ERISA, 29 U.S.C. § 1104(a)(1)(D), and its reliance on the four corners of the concomitant written plan documents so designating, as the Sixth Circuit and some other lower courts have held, or by evolving and developing federal common law, as the Fifth Circuit and some others have held. (Opp. at 2, 12) Respondent, however, would prefer for this Court to leave employees in the Sixth Circuit (and possibly the Second Circuit and a number of federal districts) who are subject to ERISA plans with what Respondent considers to be an egregious result. (*Id.* at 12) Respondent also would leave employees and plan administrators within the First, Third, Ninth, Tenth, Eleventh, D.C., and (possibly) Second Circuits without any certainty as to whether they can expect a strict application of ERISA's plain textual commands to limit distributions to persons named in the plan documents or reliance on federal common law that in turn borrows from preempted state law. (*Id.* at 6-7, 12) Notwithstanding Respondent's own lack of concern for the continuing uncertainty on this issue across the country, in view of the very real burdens imposed by the current state of the law, Petitioner anticipates that plan administrators will be appearing as *amici curaie* in support of this petition.

While attempting to downplay the significance of the circuit split on the question presented, Respondent's Opposition seeks to put forward the best arguments on the merits of the question, which, while ultimately invalid and unsound, only serve to confirm the importance of this Court's granting the petition for a writ of certiorari and resolving this issue. For instance, contrary to Respondent's central argument, Congress did not "select" the development of a federal common law when it enacted a statute that

dictates that ERISA plan administrators must administer plans "in accordance with the documents and instruments governing the plan," which plans, according to ERISA itself, "shall be established and maintained pursuant to a written instrument" and "shall ... specify the basis on which payments are made to and from the plan." 29 U.S.C. §§ 1102(a)(1), 1102(b)(4), 1104(a)(1)(D). (Opp. at 6, 8) However, a majority of the federal Courts of Appeals that have considered this issue have reached this erroneous conclusion.

Respondent also remarkably argues that plan administrators' interests are of no moment in construing the ERISA statute, which Respondent claims was enacted solely for the benefit of employee beneficiaries. (Opp. at 9) This unsupported assertion flies in the face of this Court's reasoning in its recent decision in *Egelhoff v. Egelhoff*, 532 U.S. 141, 147-51 (2001), which considered "the congressional goal of 'minimizing the administrative and financial burdens' on plan administrators" while holding that a state statute that provided for the automatic revocation upon divorce of the designation of a spouse as the beneficiary of an ERISA-governed employee benefit plan is preempted by ERISA. It also ignores this Court's observation that plan administrators' "costs of delay and uncertainty can be passed on to beneficiaries, thereby thwarting ERISA's objective of efficient plan administration." *Id.* at 149 n.3.

Respondent further asserts that the adoption of federal common-law waiver rules requiring a search for and analysis of divorce decrees and property settlement agreements poses no greater burden on ERISA plan administrators than does administrators' review of Qualified Domestic Relations Orders ("QDROs"). (Opp. at 9) In fact, this argument has been discussed and repudiated elsewhere for ignoring fundamental distinctions between the burdens imposed by reviewing statutorily-prescribed and regulated QDROs and by seeking out and analyzing purported waivers incorporated

into divorce decrees and other documents falling outside of ERISA's statutory framework. *Estate of Altobelli v. IBM Corp.*, 77 F.3d 78, 83 (4th Cir. 1996) (Wilkinson, J., dissenting); *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 283 (7th Cir. 1990) (en banc) (Easterbrook, J., dissenting); George A. Norwood, *Who is Entitled to Receive a Deceased Participant's ERISA Retirement Plan Benefits—an Ex-Spouse or Current Spouse? The Federal Circuits Have an Irreconcilable Conflict*, 33 GONZ. L. REV. 61, 93-95 (1997-98).

Indeed, it is not difficult to imagine other scenarios outside of divorce property settlements in which persons other than a named plan beneficiary may claim an entitlement to plan benefits on the basis of equity. Administrators' burdens will only increase if, under Respondent's preferred approach, administrators are required in such circumstances to go beyond governing plan documents and instruments expressly naming or identifying a beneficiary of an ERISA-governed plan and to follow various federal common-law rules for determining the identity of the proper beneficiary.

Respondent's Opposition does not join issue with, and cannot refute, the inescapable conclusion that the worst of all possible worlds for ERISA's goals of predictability, uniformity, certainty, and simplicity of plan administration currently obtains—one in which the current circuit split requires plan administrators (whose administrative and financial burdens are "ultimately borne by the beneficiaries," *Egelhoff*, 532 U.S. at 149-50) to determine the proper beneficiary in a divorce context based on the governing plan documents and instruments in some jurisdictions and based on varying formulations of federal common-law rules in others. Furthermore, none of Respondent's various arguments changes the fact that the split among the Courts on this issue is deep and will not resolve itself, even after *Egelhoff*. Whatever arguments can be advanced for overriding the employee's own plan designations for

"equitable" reasons, the importance of this issue and the need for this Court's review remain unrefuted by Respondent's Opposition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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No. 04-1283

IN THE

Supreme Court of the United States

KIMBERLYE FINCH,

Petitioner,

v.

EDDIE LEE GALAWAY, Administrator,
on behalf of Estate of Bradford Wayne Galaway,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONER AND BRIEF OF AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF AND LATE FILING

Amicus moves the Court to grant it leave to file late its motion for leave and brief. *Amicus* brief was due on April 25, 2005. Although *amicus* was a party to the lower court who filed the interpleader action and an *amicus* at the Fifth Circuit, *amicus* was never served or received notice that petitioner Kimberlye Finch filed petition for writ of *certiorari*. Counsel for *amicus* made numerous attempts to contact counsel for Kimberlye Finch about the filing of his brief, but received no response until it was too late to file a timely response.

Pursuant to Rule 37.2 of the Rules of this Court, *Amicus Curiae* The Guardian Life Insurance Company of America ("Guardian") hereby moves for leave to file a brief *amicus curiae* in support of the petition for a writ of *certiorari* filed by Kimberlye Finch.*

As more fully explained in the accompanying brief, *amicus curiae* Guardian issued a group insurance policy to Bradford Wayne Galaway's employer, which provided Bradford Wayne Galaway with basic life insurance and accidental death benefits. The policy constituted an insured employee welfare benefit plan governed by Title I of the Employee Retirement Income Security Act of 1974 § 3(21)(A), 29 U.S.C. § 1002 ("ERISA").

Bradford Wayne Galaway named his then spouse, Kimberlye Finch, as the beneficiary to the policy. On or about June 20, 2002, Bradford Wayne Galaway and Kimberlye Finch were divorced. The divorce decree divested Kimberlye Finch of all rights, title, interest, and claims in and of all policies of life insurance insuring Bradford Wayne Galaway's life.

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* Petitioner Kimberlye Finch consented to the submission of the accompanying brief. Eddie Lee Galaway declined to extend his unconditional consent to the filing of the accompanying brief.

On November 8, 2002, Bradford Wayne Galaway was killed in an airplane accident. He died intestate and had not changed the named beneficiary on the life insurance policy prior to his death. Kimberlye Finch, the named beneficiary, and Eddie Lee Galaway, the administrator of Bradford Wayne Galaway's estate, both claimed sole entitlement to the insurance proceeds.

On May 30, 2003, Guardian filed an interpleader action in the United States District Court for the Northern District of Texas, Dallas Division to resolve the competing claims to the proceeds. Subsequently, Eddie Lee Galaway and Kimberlye Finch filed competing motions for summary judgment seeking the benefits under the plan.

The District Court granted summary judgment in favor of Eddie Lee Galaway based on the Fifth Circuit's precedent of applying the federal common law to the facts of the case. The appellate court affirmed. In reaching its decision, the appellate court held that Kimberlye Finch "explicitly, voluntarily and in good faith" waived her beneficiary status in the policy, rather than deciding the case based on the policy's named beneficiary as the United States Supreme Court recently did in *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001). However, no guidance was provided by the appellate court on what constitutes an "explicit, voluntarily and good faith relinquishment."

The Fifth Circuit's holding continues to deepen the conflict among the circuits and burdens the administration of ERISA plans in light of this Court's decision in *Egelhoff*. As such, review of the lower court decision is warranted.

The petition filed by Kimeberlye Finch provides a compelling basis for granting a writ of *certiorari*. The accompanying brief will assist the Court in determining whether to grant *certiorari* because (1) *amicus* can

more broadly inform this Court of the uncertainty and burdens engendered by the lower court's decision; (2) the accompanying brief addresses additional points to provide substantial support on the burdens of companies who administer ERISA plans; and (3) *amicus* discusses at length the federal common law and the confusion among the courts on what constitutes an "explicit, voluntarily and good faith relinquishment" of benefits.

Accordingly, *amicus* respectfully requests that the Court grant leave to file the accompanying brief *amicus curiae.*

Respectfully submitted,

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BRIEF OF THE *AMICUS CURIAE*

Amicus Curiae The Guardian Life Insurance Company of America ("Guardian") submits this brief in support of the petition filed by Kimberlye Finch for writ of *certiorari* to the United States Court of Appeals for the Fifth Circuit.[1]

STATEMENT OF INTEREST

Guardian provides this disclosure of its interest. Guardian is a mutual life insurance company organized and incorporated under the laws of the State of New York, having its principal place of business located at 7 Hanover Square, New York, New York 10004. Guardian initiated this lawsuit by interpleading the funds of a life insurance policy governed by Title I of the Employee Retirement Income Security Act of 1974 § 3(21)(A), 29 U.S.C. § 1002 ("ERISA"), due to competing claims to the benefits. The interest of *amicus curiae* are set forth in the motion and accompanying brief.

STATEMENT OF THE CASE

The facts of this case are not in dispute. Bradford Wayne Galaway and Kimberlye Finch were married on September 22, 2001. On February 1, 2002, Guardian issued a group insurance policy to Bradford Wayne Galaway's employer, which provided Bradford Wayne Galaway with basic life insurance and accidental death benefits. The policy constituted an insured employee welfare benefit plan governed by ERISA.

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1. Pursuant to Supreme Court Rule 37.6, this brief has been authored in its entirety by undersigned counsel for the *amicus curiae*. No person or entity, other than the named *amicus* and its counsel, made any monetary contribution to the preparation and submission of this brief.

Bradford Wayne Galaway named his then spouse, Kimberlye Finch, as the beneficiary to the policy. On or about June 20, 2002, Bradford Wayne Galaway and Kimberlye Finch were divorced. The divorce decree divested Kimberlye Finch of all rights, title, interest, and claims in and of all policies of life insurance insuring Bradford Wayne Galaway's life.

On November 8, 2002, Bradford Wayne Galaway was killed in an airplane accident. He died intestate and had not changed the named beneficiary on the life insurance policy prior to his death. Kimberlye Finch, the named beneficiary, and Eddie Lee Galaway, the administrator of Bradford Wayne Galaway's estate, both claimed sole entitlement to the insurance proceeds.

On May 30, 2003, Guardian filed an interpleader action in the United States District Court for the Northern District of Texas, Dallas Division to resolve the competing claims to the proceeds. Subsequently, Eddie Lee Galaway and Kimberlye Finch filed competing motions for summary judgment seeking the interpled benefits under the Plan.

The District Court granted summary judgment in favor of Eddie Lee Galaway based on the Fifth Circuit's precedent of applying the federal common law to the facts of the case rather than deciding the case based on the policy's named beneficiary as the United States Supreme Court recently did in *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001). In reaching its decision, the District Court held that since Kimberely Finch "explicitly, voluntarily and in good faith" waived her beneficiary status in the policy, the estate would be entitled to the proceeds.

By its decision dated December 22, 2004, the Fifth Circuit affirmed the district court's decision holding that

Kimberlye Finch waived her rights under the plan. In doing so, the Fifth Circuit concluded that application of federal common law did not undermine this Court's decision in *Egelhoff*, because *Egelhoff* is inapplicable to the present case. *Guardian Life Ins. Co. v. Finch*, 395 F.3d 238 (5th Cir. 2004). The circuit court reasoned that *Egelhoff* does not address the application of federal common law to ERISA plans. "Rather, *Egelhoff* only addresses whether ERISA preempts a state statute that automatically revokes the designation of a spouse as the beneficiary of a life insurance policy upon divorce." *Id.* at 242.

The Fifth Circuit further acknowledged that the goal of uniformity espoused by this Court in *Egelhoff* is not undermined when courts rely on the federal common law of waiver to determine if a beneficiary has waived her rights under an ERISA plan. The court reasoned that *Egelhoff* never held that uniformity would be undermined if courts relied on federal common law, because plan administrators must at times look to the federal common law when administering ERISA plans. Rejecting the assumption that reliance on federal common law would undermine national uniformity, the circuit court further surmised that the Court in *Egelhoff* strongly suggested that courts can at times rely upon common law principles when determining the identity of the beneficiary of an ERISA plan. *Id.* at 243.

The circuit court's decision continues to cast doubt on whether plan administrators are to follow the federal common law or this Court's decision in *Egelhoff* on how to determine competing claims to an ERISA plan's life insurance benefits brought by a participant's estate and that of participant's former spouse. The existing Fifth Circuit authority requires the plan administrator to examine the federal common law in making this determination. Whereas, *Egelhoff* mandates that ERISA's goal of uniform application can only be satisfied

by restricting the administrator's decision to the beneficiary designation set forth in the plan documents. It is this conflict among the Circuits that *amicus* addresses herein.

ARGUMENT

I. The Decision of the Fifth Circuit Deepens a Mature and Irreconcilable Conflict Among the Circuits and this Court's Decision in *Egelhoff v. Egelhoff* on the Administration of ERISA Plans

Guardian administers retirement and employee benefit plans, similar to the Plan at issue in this case, throughout the United States of America. These plans are typically governed by ERISA. As pronounced by the Supreme Court:

> One of the principal goals of ERISA is to enable employers 'to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits.' Uniformity is impossible, however, if plans are subject to different legal obligations in different States.

Egelhoff, 532 U.S. at 148 (quoting *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987)). Notwithstanding this goal of uniformity, different jurisdictions apply different rules regarding the distribution of plan benefits to plan participants' estates and their former spouses. In cases where the entitlement to benefits is contested, Guardian is forced to interplead the plan funds to determine their proper recipient. While the outcome of each interpleader action provides a resolution as to that specific case, no uniform guidelines have emerged to assist plan administrators with determining future competing claims to plan proceeds. Hence, ERISA's purpose of providing uniformity in administration of qualifying plans has been frustrated.

The Fifth Circuit, as exemplified in *Finch*, continues to frustrate ERISA's goal of uniformity. Its decision deepens a mature and irreconcilable conflict among the circuits and is inconsistent with the application of ERISA and this Court's decision in *Egelhoff*. ERISA requires that an employee benefit plan be administered "in accordance with the documents and instruments governing the plan. . . ." 29 U.S.C. § 1104(a)(1)(D). Further, the plan "shall specify the basis on which payments are made to and from the plan." *Id.* § 1102(b)(4). Rather than enforcing the provisions of ERISA and allowing plan administrators to easily determine beneficiary status by looking to the plan documents, the Fifth Circuit simply circumvents preemption mandated by *Egelhoff* in reviving state law under the guise of "federal common law." Specifically, the Fifth Circuit's justification that *Egelhoff* is inapplicable to this case – because *Egelhoff* addresses a state statute and not federal common law – provides a distinction with no meaning since the Fifth Circuit federal common law was shaped by Texas statutory law. *Manning v. Hayes*, 212 F.3d 866, 870 (5th Cir. 2000) (holding that courts should borrow from state law; specifically, sections 9.301 and 9.302 of the Texas Family Code[2] in determining the federal common law to apply to these types of cases). Thus, applying the federal common law provides the same result as if the state law had not been preempted at all. This result effectively renders ERISA nonsensical, as the Act requires plans to be administered to their terms, preempt state law to assure that end, and then reincorporate state law

2. Sections 9.301 and 9.302 of the Code provide that a pre-divorce decree designation of a former spouse as beneficiary of a life insurance policy is not effective unless (1) the decree designates the insured's former spouse as the beneficiary; (2) the insured redesignates the former spouse as the beneficiary after rendition of the decree; or (3) the former spouse is designated to receive the proceeds in trust for, on behalf of, or for the benefit of a child or a dependent of either former spouse. Tex. Fam. Code Ann. §§ 9.301, 9.302 (Vernon 1998).

into federal common law so that plans are not uniformly administered according to their own terms.

Not only does the interpretation of the federal common law by the Fifth Circuit, as well as the other circuits favoring the federal common law approach, render administrative provisions under ERISA illusory, but it further complicates the process of determining beneficiary status under the federal common law as no consensus among the circuits adopting this approach has been achieved. This point is illustrated by the recent decision of the Seventh Circuit in *Melton v. Melton*, 324 F.3d 941, 945 (7th Cir. 2003). *Melton* turned to the federal common law concerning waiver in determining to whom the plan administrator *should have* paid plan proceeds. The court reasoned, "when we are evaluating whether a waiver is effective in a given case, we are more concerned with whether a reasonable person would have understood that she was waiving her interest in the proceeds or benefits in question than with any magic language contained in the waiver itself." *Id.* at 945-946. This subjective approach to applying the federal common law provides no guidance to plan administrators in determining beneficiary status.

To further illustrate this point, the Fifth Circuit followed the federal common law as set forth by the Seventh and Eighth Circuit when initially determining the validity of a waiver of plan benefits. *See Brandon v. Travelers Ins. Co.*, 18 F.3d 1321 (5th Cir. 1994) (citing *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275 (7th Cir. 1990); *Lyman Lumber Co. v. Hill*, 877 F.2d 692 (8th Cir. 1989)). Contrary to the holdings in these circuits, however, the Fifth Circuit rejected any requirement that a waiver be specific or explicitly identify the benefit that is waived. *Id.* The Fifth Circuit later refined what constitutes an effective waiver of benefits when it held that the federal common law, as influenced by state law, requires that a waiver of a

beneficiary interest be "explicit, voluntary, and made in good faith." *Manning*, 212 F.3d at 874. The guidance provided by the *Manning* court, however, has provided little assistance towards the uniform application of the federal common law.

Unfortunately, no clear guidelines have been established to assist the lower courts in what constitutes an explicit, voluntary, and good faith waiver so that the federal common law can be uniformly applied. The Fifth Circuit has merely stated that "explicit" indicates something other than silence, and "voluntary" means not coerced. *Manning*, 210 F.3d at 872. Further, the court set forth the following subjective requirement for waiver: "We will only find waiver if, upon a reading of the language in the divorce decree, a reasonable person would have understood that she was waiving her beneficial interest in the life insurance policy at issue." *Clift v. Clift*, 210 F.3d 268, 269 (5th Cir. 2000), citing *Brandon*, 18 F.3d at 1326. As such, the Fifth Circuit has created yet another ambiguous test, thereby perpetuating the inconsistencies in the federal common law. *See, e.g., Fox Valley*, 897 F.2d at 275 (specificity is required); *Estate of Altobelli v. IBM*, 77 F.3d 78 (4th Cir. 1996) (the divorce decree must include a specific waiver of benefits); *Mohamed v. Kerr*, 53 F.3d 911 (8th Cir. 1995) (the analysis is fact driven); *Metro. Life Ins. Co. v. Flinkstrom*, 303 F. Supp. 2d 34 (D. Mass. 2004) (specific intent is required); *Estate of Zienowicz v. Metro. Life Ins. Co.*, 205 F. Supp. 2d 339 (D.N.J. 2002) (agreements must identify the benefit being waived).

Contrary to this Court's recent decision in *Egelhoff*, these subjective approaches to translating the federal common law require plan administrators to disregard plan documents and circumnavigate the legal waters of fifty states and divorce litigation within those states. "It would be an overwhelming burden to require plan administrators to decipher divorce

judgments to determine if an effective waiver had occurred as opposed to simply examining plan documents for the named beneficiary. Having to file interpleader actions, where multiple parties are making claims to plan proceeds would also be burdensome to plan administrators." *See MacInnes v. MacInnes*, 677 N.W.2d 889 (Mich. App. 2004).

In fact, not only would it be burdensome to require this of a plan administrator, but it may be an impossible task as the law is not only unsettled between the circuits, but within the district courts, as well as the state courts. The Fourth, Fifth, Seventh, and Eighth Circuits have adopted federal common law approaches. *See Estate of Altobelli*, 77 F.3d at 81-82 (4th Cir. 1996); *Lyman Lumber Co. v. Hill*, 877 F.2d at 693-94; *Melton*, 324 F.3d at 945-46. However, of those Circuits, only the Fifth and Seventh have reaffirmed that approach since *Egelhoff*. *See Melton*, 324 F.3d at 941; *Guardian Life Ins. Co.*, 395 F.3d at 238. The Sixth Circuit and at least one district court in the Third Circuit hold that a clear beneficiary designation in plan documents or instruments cannot be disturbed by a waiver in external documents. *Central States, Southeast & Southwest Areas Pension Fund v. Howell*, 227 F.3d 672, 676-77 (6th Cir. 2000); *Estate of Zienowicz*, 205 F. Supp. 2d at 343-44. Another case in the Third Circuit came to the opposite conclusion before *Egelhoff* was decided. *John Hancock Mut. Life Ins. Co. v. Timbo*, 67 F. Supp. 2d 339, 343-44 (D. N.J. 2002). Additionally, a conflict may also exist in the state courts, as state courts are only bound by precedent from their own courts and this Court. *See* Note: *Egelhoff v. Egelhoff: The Supreme Court's Latest Attempt to Clarify ERISA Preemption and the Decision's Effect on Texas State Law*, 54 Baylor L. Rev. 503, 527-30 (2002); *see also MacInnes*, 677 N.W.2d at 892 n.3.

This lack of uniformity is contrary to one of the core purposes of ERISA, to enable employers to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing claims and disbursing benefits. *Egelhoff*, 532 U.S. 148 (2001) (quoting *Fort Halifax Packing Co.*, 482 U.S. at 9). In *Manning*, the Fifth Circuit stated: "While we can certainly appreciate the simplicity of the bright line rule embraced by the Sixth Circuit, that simplicity comes at too great a cost." 212 F.3d at 872. Yet, it is clear that the differences in how the federal common law is applied within the majority circuits alone will necessarily create significant confusion in the courts. Without one single, simple, and objective standard, plan administrators cannot promptly pay benefits, but must undertake a subjective legal analysis of the law within the applicable jurisdiction (often retaining counsel), without any assurance that a decision to pay will not result in double liability. The choice being, then, to take the risk of paying the benefit twice or interpleading adverse claimants. The only solution is for this Court to hold that ERISA plans must pay benefits in accordance with plan documents as set forth in the Act. 29 U.S.C. § 1104(a)(1)(D).

II. Certiorari is Warranted because Resolution of the Conflict in the Lower Courts Over the Question Presented is Vital to the Orderly Administration of ERISA Plans

This Court has long recognized the host of obligations and responsibilities associated with plan administration. *E.g.*, *Fort Halifax Packing Co.*, 482 U.S. at 9 (plan administrators must determine the eligibility of claimants, calculate benefit levels, make disbursements, monitor the availability of funds for benefit payments, and keep appropriate records in order to comply with applicable reporting requirements). Plan administration is unnecessarily

further complicated when administrators are required to fulfill these obligations and responsibilities in many different States, all potentially subject to varying laws. "Given the vast number of tasks a plan administrator must perform, Congress believed '[t]he most efficient way to meet these responsibilities [was] to establish a uniform administrative scheme, which provide[d] a set of standard procedures to guide processing of claims and disbursement of benefits.'" George A. Norwood, *Who is Entitled to Receive a Deceased Participant's ERISA Retirement Plan Benefits–an Ex-Spouse or Current Spouse? The Federal Circuits Have an Irreconcilable Conflict*, 33 Gonz. L. Rev. 61, 81 (1998) (*citing Fort Halifax Packing Co.*, 482 U.S. at 9).

Moreover, it was Congress' intent in enacting ERISA to simplify an already chaotic system subject to multi-jurisdictional standards by "bring[ing] a measure of uniformity in an area where decisions under the same set of facts may differ from state to state." H.R. Rep. No. 93-533, p. 12 (1973). Creating this uniformity was among the primary goals for the Act. *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990) (Congress intended "ERISA plans to be uniform in their interpretation and simple in their application.") (citing H.R. Rep. No. 93-533 (1974), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4650). More than thirty years after ERISA's enactment, however, Congress' goal of uniformity and simplicity in plan administration has not been realized.

Despite the federal scope of the legislation, the administration of plans subject to ERISA has not been uniform across the country, as the rules that plan administrators are required to follow in identifying plan beneficiaries are neither easily discerned nor simply applied. The current split in the circuits requires plan administrators to strictly adhere to plan documents in a minority of

jurisdictions in making this determination and, in the remaining states, attempt to follow the nebulous federal common law, as influenced by pre-empted state law. When plan administrators attempting to identify plan beneficiaries are forced to look beyond the plan documents and analyze divorce decrees, various state statutes, state case law interpreting the statutes and decrees, and the federal common law, uniformity cannot be achieved. "Uniformity is impossible . . . if plans are subject to different legal obligations in different States." *Egelhoff*, 532 U.S. at 148. When uniformity is compromised, plan participants, plan administrators, and the courts pay the price.

Plan participants benefit from a uniform administrative system because uniformity furthers another fundamental goal of ERISA – it enables plan participants to easily learn their rights and obligations under their plan at any given time. *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 83 (1995). In *Schoonejongen*, this Court reasoned that plan participants can quickly determine their rights and obligations under their ERISA plan because ERISA is based on an "elaborate scheme" that is "built around reliance on the face of written plan documents." *Id.* This reliance is misplaced if plan participants reside in jurisdictions that follow the majority approach requiring plan administrators to analyze a participant's rights and benefits based on the vagaries of the federal common law, rather than the plan documents themselves.

Plan participants (and many plan administrators) are unaware of how the federal common law operates and how it can significantly impact ERISA plan benefits. It is reasonable to conclude that plan participants expect their entitlement to benefits to remain the same regardless of the state in which they reside. While the reasonableness of this expectation is manifest, it reflects a lack of understanding

regarding the current conflict in this area of the law. As a result of the split in the circuits, a plan participant can not be *certain* of his rights and obligations under an ERISA plan until a court analyzes the plan and the law, makes the determination by court order, and the order becomes final. Conversely, plan participants could easily determine their rights and obligations under an ERISA plan quickly and without reliance on legal counsel or judicial interpretation if those rights and obligations were defined by the plan documents themselves. Adopting this approach, as the Sixth Circuit has, would not only enable a plan participant to easily determine his benefits, but would promote Congress' fundamental goal that ERISA plans be efficiently and uniformly administered.

Because the circuits are deeply divided regarding whether plan documents or federal common law (as shaped by pre-empted state law) should determine beneficiary status under an ERISA plan, plan administrators are heavily burdened by the necessity to administer plans differently depending upon the state in which a participant resides. "Requiring ERISA administrators to master the relevant laws of 50 States and to contend with litigation would undermine the congressional goal of 'minimizing the administrative and financial burdens' on plan administrators – burdens ultimately borne by the beneficiaries." *Egelhoff*, 532 U.S. at 149-50 (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1990)). Since it is often unclear as to how benefits should be distributed under the federal common law approach, "the potential for double liability if the plan administrator inadvertently, but in good faith, pays the incorrect beneficiary" is quite high. Norwood, *supra*, 33 Gonz. L. Rev. at 80. If it is determined that a plan administrator misconstrued the federal common law and paid benefits to the wrong party, "the plan administrator must pay the correct

beneficiary and, at the same time, recover payment from the incorrect beneficiary, further miring the plan and its assets in legal costs.[3]" *Id.*

Since a uniform system for determining beneficiary status under an ERISA plan has not been adopted, contrary to Congress' stated intentions, plan administrators are forced to retain the services of legal counsel to assist with plan administration. However, "given the uncertainty in this area of the law, it is less than prudent for counsel to provide an unqualified opinion as to the proper beneficiary, unless the facts or property settlement agreement [in the divorce decree] are in direct alignment with recent circuit precedent." Norwood, *supra*, 33 Gonz. L. Rev. at 79. To minimize the potential for double liability, plan administrators and their counsel often resort to filing interpleader actions and depositing the plan proceeds with an already overburdened court to resolve the entitlement dispute.[4] Previously, the Court expressed its concern with this problem and noted that the filing of interpleader actions to resolve these disputes "presents an example of how the costs of delay and uncertainty can be passed on to beneficiaries, thereby thwarting ERISA's objective of efficient plan administration." *Egelhoff*, 532 U.S. at 150 n.3 (*citing Fort Halifax Packing Co.*, 482 U.S. at 9).

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3. *Amicus* directs the Court to *Kennedy v. E.I. Dupont De Nemours and Co.*, Civil Action No. 1:01-CV-904, in the United States District Court for the Eastern District of Texas Beaumont Division, in which the plan administrator, Dupont, paid the benefits of an ERISA plan according to the plan documents. The court in that case held that Dupont wrongly paid the benefits, that Dupont was liable to the proper beneficiary for these benefits, and that Dupont was not entitled to restitution.

4. *See* Appendix for a survey of recent interpleader actions filed by plan administrators.

Unfortunately, filing interpleader actions is often the only way to ensure that the proper beneficiaries are paid in a particular case, thereby eliminating a plan administrator's exposure to double liability, but adding to the overall cost and burden of administering the plan. Moreover, because of the fact-specific nature of the determination of such actions and the differing federal common law as applied by the various circuits, the resulting decisions lack significant precedential value. Thus, even though many such interpleaders have been filed, the decisions of lower courts have not and will not generate a clear and uniform rule for plan administrators to follow. Only a decision by this Court resolving the conflict among the circuits will implement the congressional intent to have a uniform system of plan administration under ERISA.

The burden on plan participants resulting from the present uncertainty is of paramount importance. As the Court reasoned in *Egelhoff*, plan administrators and the courts are not the only parties burdened by the filing of interpleader actions; these court proceedings significantly add to the delay beneficiaries experience while awaiting the benefits to which they are entitled. *Id.* As an example, the still-unresolved final disposition of the ERISA plan proceeds in this case has been argued in the courts for almost two years. Surely, the state of today's administrative scheme and the practical effect that it has on plan administrators, plan participants, and the courts is not what Congress had in mind when it contemplated uniform administration of plans and benefits and simple application of administrative procedures.

The only way that the Court can ensure that Congress' goals of uniformity and simplicity in plan administration are achieved is to adopt the minority rule among the circuits and rule that the plan documents themselves control beneficiary status. If plan administrators are no longer required to analyze

extraneous documents and interpret the ever-changing federal common law, beneficiary status would be determined quickly and accurately without legal guidance and proceeds disbursed to plan beneficiaries in a timely fashion. If plan administrators are no longer required to retain counsel to assist with plan administration, it will significantly conserve both plan and judicial resources. Specifically, plan administrators will no longer be forced to incur such significant legal costs in administering benefits to their plan participants, reducing a primary cost factor that leads to increasing premiums. Moreover, fewer interpleader actions filed with the courts will conserve the resources of an already overburdened judicial system.

Additionally, and most significantly, plan participants will be able to easily determine their rights and obligations under their plan solely by reviewing the plan documents. In essence, the aspirational statement that "[a] participant is master of his own ERISA plan" will become a reality. *See McMillan*, 913 F.2d at 312. As a true master of his plan, the participant will be able to review his beneficiary designations, change those designations if he wishes, and know that his intentions as expressed in the beneficiary designation form in his plan documents will be followed by the plan administrator. Plan administrators would no longer be required to disregard a participant's last known wishes for the beneficiaries under a particular ERISA plan or guess, between two or more competing claims, which should be honored. If the Court holds that plan documents are the only consideration in identifying beneficiaries under an ERISA plan, this issue will be resolved once and for all.

CONCLUSION

The division among the circuit courts is long standing and acknowledged by the courts themselves. Amidst this confusion among the courts, the concerns of upholding uniform administrative schemes that were espoused in *Egelhoff* have not been addressed. Accordingly, the contrary views of the circuit courts concerning the application of federal common law or whether plan documents themselves should govern when determining competing claims to benefits warrant review by this Court to resolve the conflict. For the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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